



New South Wales

# Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016

under the

Protection of the Environment Operations Act 1997

*[If this Regulation is made, the following enacting formula will be included:]*

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

Minister for the Environment

## Explanatory note

The object of this Regulation is to modify the descriptions of the following scheduled activities under the *Protection of the Environment Operations Act 1997* (for which an environment protection licence is needed):

- (a) contaminated soil treatment, by clarifying the definition of **contaminated soil** to expressly include contaminated sediment,
- (b) crushing, grinding or separating, by providing that if the processing of materials by crushing, grinding or separating occurs as part of railway infrastructure construction or road construction that requires an environment protection licence, the crushing, grinding or separating need not be separately listed on an environment protection licence,
- (c) extractive activities, by:
  - (i) abolishing the distinction between land-based and water-based extractive activities, and
  - (ii) providing that a licence is only required for activities in which the relevant extractive materials are to be sold and is not required for cut and fill operations, or the excavation of foundations, that are ancillary to development that is the subject of development consent, and
  - (iii) providing that a licence is not required for storage of extractive materials, and
  - (iv) providing that a licence is required for dredging for any purpose,
- (d) dairy animal accommodation, an aspect of livestock intensive activities, by making the capacity of milking facilities to accommodate animals the relevant factor in determining if the activity is a scheduled activity,
- (e) petroleum products and fuel production, by excluding the activity of blending additives with petroleum to produce a blended fuel product, but only if the activity is carried on at the fuel service station from which the fuel product is to be sold,
- (f) railway systems activities, by splitting up the activity into three separate scheduled activities: railway activities—railway infrastructure construction, railway activities—railway infrastructure operations and railway activities—rolling stock operations,

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- (g) road construction, by extending the activity to include activities ancillary to the construction of roads,
- (h) resource recovery and waste processing, by exempting certain landscaping supply yards,
- (i) waste storage, by exempting certain landscaping supply yards and the storage of virgin excavated natural material in certain circumstances.

This Regulation also makes amendments to the *Protection of the Environment Operations (General) Regulation 2009* that are a consequence of those modifications:

- (a) modifying the manner of determining the licensing fees for the scheduled activities of extractive activities, railway activities—railway infrastructure construction, railway activities—railway infrastructure operations, railway activities—rolling stock operations and road construction, and
- (b) inserting savings and transitional provisions to deal with how the modifications of existing scheduled activities operate for existing and new licensees.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 5 (3), 57 (1) and 323 (the general regulation-making power).

## **Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016**

under the

Protection of the Environment Operations Act 1997

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

### [1] Schedule 1 Scheduled activities

Insert after clause 16 (1):

- (1A) However, this clause does not apply to the processing of materials by crushing, grinding or separating that occurs as part of an activity that is declared to be a scheduled activity by:
- (a) clause 33 (Railway activities—railway infrastructure construction), or
  - (b) clause 35 (Road construction).

### [2] Schedule 1, clause 19

Omit the clause. Insert instead:

#### 19 Extractive activities

- (1) This clause applies to *extractive activities*, meaning:
- (a) the extraction or processing of extractive materials, by means of excavation, blasting, tunnelling, quarrying or other methods, for the primary purpose of sale of the extractive materials, or
  - (b) dredging for any purpose.
- (2) However, this clause does not apply to cut and fill operations, or the excavation of foundations or earthworks, that are ancillary to development that is subject to development consent or approval under the *Environmental Planning and Assessment Act 1979*.
- (3) The activities to which this clause applies are declared to be scheduled activities if they involve the extraction, processing or dredging of more than 30,000 tonnes of extractive materials per year.
- (4) In this clause, *extractive materials* means clay, sand, soil, stone, gravel, rock, sandstone or similar substances that are not minerals within the meaning of the *Mining Act 1992*.

### [3] Schedule 1, clause 22 (1)

Omit the definition of *dairy animal accommodation*. Insert instead:

*dairy animal accommodation* means the accommodation of dairy animals in milking facilities for milk production.

### [4] Schedule 1, clause 22 (3)

Insert after clause 22 (2):

- (3) In this clause:
- dairy animal* means an animal used for the production of milk.
- milking facilities* means free stall complexes, feed pads, loading pads, milking sheds or stand-off areas, but does not include pasture, calving areas or calving sheds.

### [5] Schedule 1, clause 22, Table

Omit the matter relating to dairy animal accommodation from Column 2. Insert instead:

capacity to accommodate more than 800 dairy animals at any time

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**[6] Schedule 1, clause 31A (2)**

Omit the subclause. Insert instead:

- (2) However, this clause does not apply to:
  - (a) the activity of blending a fuel with ethanol or biodiesel if that activity is carried on at a petroleum fuel storage terminal and the occupier of those premises is, at the time that activity is carried on, the holder of an environment protection licence that authorises the activity of petroleum products storage (within the meaning of clause 9), or
  - (b) the activity of blending additives with fuel to produce petroleum products if that activity is carried on at a fuel service station and the petroleum products are sold only at that fuel service station.

**[7] Schedule 1, clause 31A (4)**

Insert after clause 31A (3):

- (4) In this clause:  
***fuel service station*** means premises from which fuel is dispensed using a dispenser fitted to a pump that is operated to dispense fuel from a storage tank situated on the premises, but not from a vehicle or vessel.

**[8] Schedule 1, clauses 33–33B**

Omit clause 33. Insert instead:

**33 Railway activities—railway infrastructure construction**

- (1) This clause applies to ***railway activities—railway infrastructure construction***, meaning the following:
  - (a) the construction (including the installation, amplification, extension, widening or re-routing) of railway infrastructure,
  - (b) the clearing of the land on which, or alongside which, railway infrastructure is located or proposed to be located (including by widening or extending the area of land available for that purpose),
  - (c) any tunnelling, earthworks and cuttings that are necessary for such construction or clearing,
  - (d) any crushing, grinding or separating of material extracted for such construction or clearing,
  - (e) any extraction or processing of materials for such construction or clearing, including materials brought on-site.
- (2) However, this clause does not apply to the operation, on-site repair, on-site maintenance or on-site upgrading of railway infrastructure (to which clause 33A applies).
- (3) The activity to which this clause applies is declared to be a scheduled activity if the railway infrastructure construction involves one or more of the following:
  - (a) the extraction or processing of more than 30,000 tonnes of material in total over the life of the construction,
  - (b) construction of new railway track that is:
    - (i) in the metropolitan area—3 kilometres or more in length, or
    - (ii) outside the metropolitan area—5 kilometres or more in length.

- (4) For the purposes of calculating the length of a railway track, individual tracks constructed alongside one other are not to be added together.
- (5) In this clause:  
*railway infrastructure* includes, but is not limited to, the following:
  - (a) railway tracks,
  - (b) sleepers and ballasts,
  - (c) embankments, bridges, tunnels and over track structures,
  - (d) signalling equipment.

### **33A Railway activities—railway infrastructure operations**

- (1) This clause applies to *railway activities—railway infrastructure operations*, meaning the operation, on-site repair, on-site maintenance or on-site upgrading of railway infrastructure.
- (2) However, this clause does not apply to any of the following:
  - (a) the construction (including the installation, amplification, extension, widening or re-routing) of railway infrastructure,
  - (b) the clearing of the land on which, or alongside which, railway infrastructure is located or proposed to be located (including by widening or extending the area of land available for that purpose),
  - (c) any tunnelling, earthworks and cuttings that are necessary for such construction or clearing,
  - (d) any crushing, grinding or separating of material extracted for such construction or clearing,
  - (e) any extraction or processing of materials for such construction or clearing, including materials brought on-site,
  - (f) the operation, on-site maintenance, on-site repair or on-site upgrading of railway infrastructure used solely by any of the following:
    - (i) light railway vehicles, including trams,
    - (ii) inclined railway vehicles,
    - (iii) monorail vehicles,
    - (iv) railway vehicles that are used solely for heritage purposes,
  - (g) the off site repair, maintenance or upgrading of railway track,
  - (h) the operation of signalling, communication or train control systems,
  - (i) any operation of rolling stock to which clause 33B applies,
  - (j) any activity at any of the following places:
    - (i) a railway station building (including platforms and offices),
    - (ii) a railway workshop,
    - (iii) a freight depot or centre,
    - (iv) a railway fuel depot.
- (3) The activity to which this clause applies is declared to be a scheduled activity if it involves a continuous or connected length of track greater than 30 kilometres that is operated by the same person.
- (4) For the purposes of calculating the length of a railway track, individual tracks constructed alongside one other are not to be added together.
- (5) In this clause, *railway infrastructure* has the same meaning as in clause 33.

## **33B Railway activities—rolling stock operations**

- (1) This clause applies to ***railway activities—rolling stock operations***, meaning the operation of rolling stock.
- (2) However, this clause does not apply to:
  - (a) the loading of freight into or onto rolling stock, or
  - (b) the unloading of freight from rolling stock, or
  - (c) the operation, on-site repair, on-site maintenance or on-site upgrading of railway infrastructure (within the meaning of clause 33A).
- (3) The activity to which this clause applies is declared to be a scheduled activity if it is carried out on railway infrastructure, the operation of which is a scheduled activity by virtue of clause 33A.
- (4) In this clause, ***rolling stock*** means railway vehicles used or intended to be used to transport passengers or freight for reward.
- (5) However, in this clause ***rolling stock*** does not include:
  - (a) railway vehicles used, or intended to be used, solely for heritage purposes, or
  - (b) railway vehicles used, or intended to be used, to maintain railway infrastructure.

## **[9] Schedule 1, clause 34 (2A)**

Insert after clause 34 (2):

- (2A) This clause also does not apply to the receiving of waste from off site and its processing if:
  - (a) all waste received from off site has already been processed to any standards required by a resource recovery order (made under clause 93 the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
  - (b) the waste received from off site does not include any building and demolition waste, and
  - (c) the only thing done to the waste received from off site is that it is stored or placed in bags at the same premises from which the waste is sold as landscaping supply material, that is, as soil amendments or for landscape gardening, and
  - (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.

## **[10] Schedule 1, clause 35**

Omit the clause. Insert instead:

### **35 Road construction**

- (1) This clause applies to ***road construction***, meaning the following:
  - (a) the construction (including the installation, amplification, extension, widening or re-routing) of roads,
  - (b) any tunnelling, earthworks and cuttings that are necessary for such construction,
  - (c) any crushing, grinding or separating of material extracted for such construction,

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- (d) any extraction or processing of materials for such construction, including materials brought on-site.
- (2) However, this clause does not apply to:
  - (a) the maintenance or operation of any road, or
  - (b) the excavation and replacement of an existing road surface, including a road pavement.
- (3) The activity to which this clause applies is declared to be a scheduled activity if:
  - (a) it results in the existence of 4 or more traffic lanes (other than bicycle lanes or lanes used for entry or exit) for at least:
    - (i) a continuous length of 1 kilometre of the road—where the road is in a metropolitan area and is classified, or proposed to be classified, as a freeway or tollway under the *Roads Act 1993*, or
    - (ii) a continuous length of 3 kilometres of the road—where the road is in a metropolitan area and is classified, or proposed to be classified, as a main road (but not a freeway or tollway) under the *Roads Act 1993*, or
    - (iii) a continuous length of 5 kilometres of the road—where the road is not in a metropolitan area and is classified, or proposed to be classified, as a main road, freeway or tollway under the *Roads Act 1993*, or
  - (b) it involves the extraction or processing of more than 30,000 tonnes of materials in total over the life of the construction.

**[11] Schedule 1, clause 41 (2AA)**

Insert after clause 41 (2):

- (2AA) This clause also does not apply to the receiving of waste from off site and its processing if:
  - (a) all waste received from off site has already been processed to any standards required by a resource recovery order (made under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
  - (b) the waste received from off site does not include any building and demolition waste, and
  - (c) the only thing done to the waste received from off site is that it is stored or placed in bags at the same premises from which the waste is sold as landscaping supply material, that is, as soil amendments or for landscape gardening, and
  - (d) no other activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.

**[12] Schedule 1, clause 42 (2A) and (2B)**

Insert after clause 42 (2):

- (2A) This clause also does not apply to the receiving of waste from off site and its storage if:
  - (a) all waste received from off site has already been processed to any standards required by a resource recovery order (made under clause 93



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- of the *Protection of the Environment Operations (Waste) Regulation 2014*) at the time it is received, and
- (b) the waste received from off site does not include any building and demolition waste, and
  - (c) the only thing done to the waste received from off site is that it is stored or placed in bags at the same premises from which the waste is sold as landscaping supply material, that is, as soil amendments or for landscape gardening, and
  - (d) no activity is carried out at the premises that would result in the premises being a scheduled waste facility within the meaning of the *Protection of the Environment Operations (Waste) Regulation 2014*.
- (2B) This clause also does not apply to the receiving of virgin excavated natural material from off site, or to its storage, if:
- (a) all waste received is virgin excavated natural material, and
  - (b) the virgin excavated natural material is not processed in any way at the facility.

**[13] Schedule 1, clause 50 (1), definition of “contaminated soil”**

Omit the definition. Insert instead:

***contaminated soil*** means soil or sediment that contains a substance at a concentration above the concentration at which the substance is normally present in soil or sediment from the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, where ***harm to the environment*** includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

**[14] Schedule 1, clause 50 (1), definition of “mobile plant”**

Omit “rolling stock”.

Insert instead “railway vehicles used or intended to be used to transport passengers or freight for reward or to maintain railway track and equipment”.

**[15] Schedule 1, clause 50 (1), definition of “rolling stock”**

Omit the definition.

## **Schedule 2      Amendment of Protection of the Environment Operations (General) Regulation 2009**

### **[1]    Schedule 1 Licensing fees**

Omit the matter relating to EXTRACTIVE ACTIVITIES. Insert instead:

#### **EXTRACTIVE ACTIVITIES**

**Extractive activities (see clause 19 (1) of Schedule 1 to the Act)**

##### **1    Units of measure: tonnes**

##### **2    Administrative fee**

<b>Annual extractive, processing or dredging amount</b>	<b>Administrative fee units</b>
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More than 30,000 but not more than 50,000 tonnes	15
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More than 50,000 but not more than 100,000 tonnes	50
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More than 100,000 but not more than 500,000 tonnes	135
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More than 500,000 but not more than 2,000,000 tonnes	335
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More than 2,000,000 tonnes	600
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##### **3    Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)**

### **[2]    Schedule 1**

Insert after the heading “**PETROLEUM EXPLORATION, ASSESSMENT AND PRODUCTION**”:

**Petroleum exploration, assessment and production (see clause 31 of Schedule 1 to the Act)**

### **[3]    Schedule 1**

Insert after the heading “**PETROLEUM PRODUCTS AND FUEL PRODUCTION**”:

**Petroleum products and fuel production (see clause 31A of Schedule 1 to the Act)**

### **[4]    Schedule 1**

Omit the matter relating to RAILWAY SYSTEMS ACTIVITIES.

Insert instead:

#### **RAILWAY ACTIVITIES—RAILWAY INFRASTRUCTURE CONSTRUCTION**

**Railway activities—railway infrastructure construction (see clause 33 (1) of Schedule 1 to the Act)**

##### **1    Units of measure: kilometres or tonnes**

##### **2    Administrative fee**

**Administrative fee units**

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## RAILWAY ACTIVITIES—RAILWAY INFRASTRUCTURE CONSTRUCTION

### **Total amount of extraction or processing (where the estimated remaining extraction or processing is less than 30,000 tonnes)**

Where the total length of the railway track to be constructed is not more than 10 kilometres 50

Where the total length of the railway track to be constructed is more than 10 kilometres but not more than 30 kilometres 135

Where the total length of the railway track to be constructed is more than 30 kilometres 335

### **Total amount of extraction or processing (where the estimated remaining extraction or processing is more than 30,000 tonnes)**

#### **Where the total length of the railway track to be constructed is not more than 10 kilometres:**

more than 30,000 but not more than 100,000 tonnes 50

more than 100,000 but not more than 500,000 tonnes 135

more than 500,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

#### **Where the total length of the railway track to be constructed is more than 10 kilometres but not more than 30 kilometres:**

more than 30,000 but not more than 500,000 tonnes 135

more than 500,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

#### **Where the total length of the railway track to be constructed is more than 30 kilometres:**

more than 30,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

### **3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

## RAILWAY ACTIVITIES—RAILWAY INFRASTRUCTURE OPERATIONS

### **Railway activities—railway infrastructure operations (see clause 33A (1) of Schedule 1 to the Act)**

#### **1 Units of measure:** (not applicable)

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## RAILWAY ACTIVITIES—RAILWAY INFRASTRUCTURE OPERATIONS

### 2 Administrative fee

Annual capacity	Administrative fee units
Any capacity	50

### 3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

## RAILWAY ACTIVITIES—ROLLING STOCK OPERATIONS

### Railway activities—rolling stock operations (see clause 33B (1) of Schedule 1 to the Act)

#### 1 Units of measure: (not applicable)

### 2 Administrative fee

Annual capacity	Administrative fee units
Any capacity	50

### 3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

## [5] Schedule 1

Omit the matter relating to road construction. Insert instead:

## ROAD CONSTRUCTION

### Road construction (see clause 35 (1) of Schedule 1 to the Act)

#### 1 Units of measure: kilometres or tonnes

### 2 Administrative fee

#### Administrative fee units

#### Total amount of extraction or processing (where the estimated remaining extraction or processing is less than 30,000 tonnes)

Where the total length of the road to be constructed is not more than 10 kilometres	50
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Where the total length of the road to be constructed is more than 10 kilometres but not more than 30 kilometres	135
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Where the total length of the road to be constructed is more than 30 kilometres	335
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#### Total amount of extraction or processing (where the estimated remaining extraction or processing is more than 30,000 tonnes)

#### Where the total length of the road to be constructed is not more than 10 kilometres:

more than 30,000 but not more than 100,000 tonnes	50
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## ROAD CONSTRUCTION

more than 100,000 but not more than 500,000 tonnes 135

more than 500,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

**Where the total length of the road to be constructed is more than 10 kilometres but not more than 30 kilometres:**

more than 30,000 but not more than 500,000 tonnes 135

more than 500,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

**Where the total length of the road to be constructed is more than 30 kilometres:**

more than 30,000 but not more than 2,000,000 tonnes 335

more than 2,000,000 tonnes 600

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

## [6] Schedule 8 Savings and transitional provisions

Insert after Part 5:

## Part 6 Provisions consequent on commencement of Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016

### 16 Definition

In this Part, *amending Regulation* means the *Protection of the Environment Operations Legislation Amendment (Scheduled Activities) Regulation 2016*.

### 17 Commencement of licensing requirements for railway activities—railway construction

- (1) Despite clause 47 of this Regulation, if, because of the substitution of clause 33 in Schedule 1 to the Act by the amending Regulation, it has become necessary for a person to be authorised by a licence or a licence variation to continue to carry out any work or activity, a licence or licence variation is not required until the later of the following:
  - (a) the end of the period 3 months after the commencement of that substitution,
  - (b) the relevant licence application (if any) made before the end of that period by the person has been finally determined.
- (2) A person who held a licence for railway systems activities that authorised the installation of track or the construction or significant alteration of any ancillary

works that was in force immediately before the commencement of the amending Regulation is taken, on the commencement date, to hold a licence for the scheduled activity of railway activities—railway infrastructure construction until the relevant application for licence variation (if any) has been finally determined.

**18 Commencement of licensing requirements for railway activities—railway infrastructure operations**

- (1) Despite clause 47 of this Regulation, if, because of the insertion of clause 33A into Schedule 1 to the Act by the amending Regulation, it has become necessary for a person to be authorised by a licence variation to continue to carry out any work or activity, a licence variation is not required until the later of the following:
  - (a) the end of the period 6 months after the commencement of that insertion,
  - (b) the relevant application for licence variation (if any) made before the end of the period by the person has been finally determined.
- (2) A person who held a licence for railway systems activities that authorised the on-site repair, on-site maintenance or on-site upgrading of track, or the operation of rolling stock on track that was in force immediately before the commencement of the amending Regulation is taken, on the commencement date, to hold a licence for the scheduled activities of railway activities—railway infrastructure operations and railway activities—rolling stock operations until the earlier of the following:
  - (a) the end of the period 10 months after the commencement of that amending Regulation,
  - (b) the relevant application for licence variation (if any) has been finally determined and all relevant licence applications for railway activities—rolling stock operations have been finally determined.
- (3) A person who, by virtue of subclause (2), is taken to hold a licence is taken to operate all of the rolling stock on the railway infrastructure until the earlier of the following:
  - (a) the end of the period 10 months after the commencement of that amending Regulation,
  - (b) the relevant application for licence variation (if any) has been finally determined and all relevant licence applications for railway activities—rolling stock operations have been finally determined.

**19 Commencement of licensing requirements for railway activities—rolling stock operations**

Despite clause 47 of this Regulation, if, because of the insertion of clause 33B into Schedule 1 to the Act by the amending Regulation, it has become necessary for a person to be authorised by a licence to continue to carry out any work or activity, a licence is not required until the later of the following:

- (a) the end of the period 6 months after the commencement of that insertion,
- (b) the relevant licence application (if any) made before the end of that period by the person has been finally determined.

## **20 Commencement of licensing requirements for road construction**

Despite clause 47 of this Regulation, if, because of the substitution of clause 35 of Schedule 1 to the Act by the amending Regulation, it has become necessary for a person to be authorised by a licence or a licence variation to continue to carry out any work or activity, a licence or licence variation is not required until the later of the following:

- (a) the end of the period 3 months after the commencement of that substitution,
- (b) the relevant licence application (if any) made before the end of that period by the person has been finally determined.