

Operational policy

Deciding the term of a mining lease

MIN/2016/3088

03 March 2021

Version 1.03

1. Purpose

The purpose of this policy is to provide information on how the Minister will determine the term of a mining lease (ML) at either grant or renewal.

The information contained in this policy reflects current practices within the department and does not limit the exercise of discretion or override legislative requirements. These practices may change from time to time with changes to be published through a revised version of this policy.

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

1.1 Relevant Legislation

This policy applies to the grant and renewal of a ML¹ under the *Mineral Resources Act 1989* (MRA) but is not intended to limit the Minister's discretion to decide the term of a ML.

1.2 Background

Under the MRA there is no prescribed limit to the term of a ML. The term of an ML is at the discretion of the Minister who, pursuant to s.271(b), s.284(1) and s.286A(1)(c) of the MRA, must consider if the term nominated for the ML is appropriate. If the Minister considers the term appropriate the Minister will approve the ML for that term. If the Minister does not consider the term appropriate, the ML will be approved for a term determined by the Minister.

Since the commencement of the MRA, the median term of an ML is 20 years, however as the scale of mining projects have increased, mining applicants are now applying for longer terms.

Lengthy ML terms may restrict the department's ability to review mining operations. Periodic reviews provide an opportunity to ensure that mines continue to operate in the best interests of the State, the company and the community. This is because following the grant of a ML the Minister is not in a position to amend the conditions, without the holder's consent, until the renewal period.

The renewal application process is an important opportunity for the Minister and the ML holder to review the progress of the mining operation. This process ensures the ML is progressing in line with the Government's expectations and allows the Minister to place conditions on the ML if required.

¹ This operational policy only applies to the *Mineral Resources Act 1989* and does not apply to any special agreement Acts.

Important Note: The examples contained in the following section are indicative only and not prescriptive. Ultimately the decision about what information to provide in support of any specific ML term rests with the applicant.

Policy Determination

1. Under s.245(1)(m) and s.286(2)(c) of the MRA, all applicants are required to identify the term for the ML and provide reasons for the length of term that they are seeking.
2. Under s.271(b), s.284(1) and s.286A(1)(c) of the MRA the Minister must consider the matters specified in the application, including whether the term sought is appropriate.
3. An ML application should contain information that substantiates the ML term nominated. The information will need to demonstrate why the ML term is appropriate with proper regard for the overall development and operation of the ML.

If an ML applicant is relying upon factors and arrangements that they believe would have a significant bearing on the decision relating to the term, then the department will require this information. The Minister retains the discretion under the MRA to consider additional matters.

4. By way of examples, information in an application may include, but is not limited to:
 - A mining operations plan that includes a mining program or life of mine schedule that supports the ML term. This may include timeframes for proposed development of the mine and related infrastructure, the timing and rate of production, and rehabilitation plans.²
 - Resource and reserve information and feasibility studies that clearly demonstrate an economically robust and sustainable mining operation. Reports should be prepared by or under the direction of and signed by a qualified person i.e. a person who is a member of a professional society for earth scientists or mineral engineers, or has other appropriate qualifications.
 - Negotiated sale/supply contracts that are dependent on a guaranteed supply of mineral for at least the term nominated by the holder.
 - Financial capability information and statements which demonstrate that the applicant and/or related third party investors, lenders or joint venture partners have the financial capability to carry out development, operations and rehabilitation for the nominated term.
 - Information to support a claim that a specific ML term is required in order to gain a return on pre-mine investment. For example, a timeline used to demonstrate how the applicant would obtain a return on their investment over the course of the nominated term.
 - Details of any supporting infrastructure, such as housing, roads, rail lines, ports and other regional projects, that is required for the ML and the cost of which will need to be amortised over the nominated ML term.
5. Without limiting the Minister's discretion under the MRA, the Minister will generally not approve a ML term that exceeds the average historical term, unless the applicant establishes that there are exceptional reasons for the nominated term. The onus is on the applicant to submit sufficient information in support of their application to allow the Minister to make a decision under the MRA.
6. As the historical average will move over-time, and in order to provide clarity to applicants, a guidance benchmark of 25 years (which is five years in excess of the historic average)

² Note: provision of a defined life of mine on its own may not in itself justify an appropriate term. This is because the MRA specifically caters for the renewal of MLs to ensure a mining operation can progress through its planned life cycle.

is provided as an indication of when additional evidence of exceptional circumstances will be required. Every application will however be dealt with on a case-by-case basis and on its own merits.

7. Regardless of any evidence provided in support of a term exceeding the historical average, the Minister may still determine that the nominated term is not appropriate, and approve the ML for a lesser term.
8. An assessment officer or the Minister may obtain independent expert advice relating to information provided with an ML application. For example, an assessment officer may seek advice from an agency that has financial expertise. This advice may be used to inform assessing the application and the decision on the ML term.
9. Applicants will be afforded natural justice in relation to the decision on the ML term.

Important Note: A pre-lodgement meeting with the Coal or Mineral Assessment Hub is highly recommended to discuss supporting evidence for any proposed ML or renewal term that exceeds the historic average.

Document information

Availability: External

Location: Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

Future Review date: February 2022

Related documents: This policy should be read in conjunction with the **Mining Lease Application Guide**.

Contacts: For help and information about this policy, please contact the Mineral Assessment Hub on (07) 4447 9230 or email mineralhub@resources.qld.gov.au or the Coal Assessment Hub on (07) 4936 0169 or email coalhub@resources.qld.gov.au.

Disclaimer

The purpose of this policy is to provide a framework for consistent application and interpretation of the legislation administered by the department. Policies may be applied flexibly where individual circumstances require an alternative application of policy. Where this policy, or part of this policy, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency. While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Queensland Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Keywords

MIN/2016/3088; Resources; MRA; mining lease; ML