



Government of **Western Australia**  
Department of **Mines and Petroleum**



PROPOSED LOW IMPACT AUTHORISED  
ACTIVITIES FRAMEWORK FOR  
PROSPECTING AND EXPLORATION UNDER  
AMENDMENTS TO THE MINING ACT 1978

For stakeholder comment

2 April 2015



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## FOREWORD

A key area of the Department of Mines and Petroleum's (DMP) Reforming Environmental Regulation (RER) initiative is to provide a framework for low impact authorised activities relating to prospecting and exploration. The intent is that low impact prospecting and exploration activities regulated under the Mining Act 1978 will be exempt from the requirements for individual environmental assessments, and instead be subject to prescribed environmental standards.

Under proposed amendments to the Mining Act 1978, low impact activities will be administered under a notification process; the tenement holder (or persons authorised to do so on behalf of the tenement holder) will be required to notify DMP of the nature of activity, the proposed commencement date and the completion date.

It is proposed that the tenement holders be required to demonstrate that the intended activity meets the low impact activity criteria which will be prescribed in the Mining Regulations 1981.

Once notification occurs, the tenement holder will be able to commence the low impact activity. DMP will not undertake an individual assessment (and therefore there will be no requirement for the tenement holder to wait for an approval), however the activity will be subject to the compliance and inspection program of DMP.

It is proposed that current obligations on tenement holders to meet their tenement conditions remain in place, and failure to comply with the prescribed obligations will subject the tenement to enforcement action under the *Mining Act 1978*.

This consultation paper outlines suggested definitions of low impact authorised activities, and the relevant prescribed environmental obligations, that have been prepared by DMP.

I encourage you to read this consultation paper and to submit your comments on what is being proposed.

Phil Gorey

**EXECUTIVE DIRECTOR ENVIRONMENT**

2nd April 2015

## SUBMISSIONS

The Department of Mines and Petroleum (DMP) invites people to make a submission on proposed definitions of low impact authorised activities, and the relevant prescribed environmental obligations for the Mining Regulations 1981.

All submissions will be considered by DMP before the amendments to the mining legislation are presented to the State Government. All submissions made to DMP will be publicly available.

A feedback form is enclosed (Attachment 1) to assist you in providing your comments.

Remember to include:

- your name;
- address; and
- date.

Points to keep in mind:

- clearly state your point of view;
- indicate the source of your information if applicable; and
- suggest alternative recommendations where necessary.

Electronic submissions are preferred, and can be submitted to: [reform@dmp.wa.gov.au](mailto:reform@dmp.wa.gov.au)

Submissions must be received by **5.00pm on 28th May 2015**.

If you have any queries regarding the proposal, please contact one of the following DMP officers:

Mr Dan Machin, General Manager Minerals South on (08) 9222 3446;  
or  
Ms Julie Mahony, Policy Officer on (08) 9222 3231.

Copies of the current Act and Mining Regulations 1981 are available on the State Law Publisher's website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

## BACKGROUND

In January 2014, the Department of Mines and Petroleum (DMP) undertook consultation on proposed amendments to the *Mining Act 1978* (“the Act”) to introduce an approval exemption process for low impact activities.

The reason for this proposal was that, at present, all exploration and prospecting activities require an approval through a Programme of Work, regardless of the scale of the activity. While Programmes of Work will continue to be a requirement for the majority of proposed exploration activities, it was proposed to introduce the capacity for certain “low-risk” exploration and prospecting activities to not require submission for regulatory assessment. The tenement holder would still be required to undertake the appropriate environmental appraisal and maintain records and evidence that the exploration activity is low-risk and does not adversely impact on sensitive flora, fauna, etc.

It was proposed that under such an arrangement, environmental obligations would be maintained as the Act would also prescribe certain standard environmental management conditions. In addition, the tenement holder would remain obliged to report disturbance through the *Mining Rehabilitation Fund Act 2012*.

This proposal is consistent with the objectives of DMP’s Reforming Environmental Regulation initiative which introduces a risk based approach to environmental regulation. This was broadly supported by stakeholders through the consultation process<sup>1</sup>.

The form of this framework is proposed to be:

1. Amendments to the Act that enable low impact activities and obligations to be prescribed in regulation.
2. Amendments to the Mining Regulations 1981 to specifically define the low impact activities and list the specific environmental obligations.

The necessary amendments (Step 1) have been prepared and are currently being considered by government. To assist in stakeholder understanding of the proposed operation of the low impact authorised activities framework, DMP has released this consultation paper on proposed definitions for low impact activities and their specific environmental obligations. These definitions for low impact authorised activities will only be able to be implemented after the Act is amended (through those amendments currently being considered by government).

<sup>1</sup>The consultation paper and a summary of submissions are available on the DMP website at <http://www.dmp.wa.gov.au/19489.aspx>

## PROPOSED DEFINITION OF LOW IMPACT ACTIVITIES

It is proposed that the Mining Regulations 1981 will define a low impact activity for prospecting and exploration as a combination of:

1. the locality in which the activity occurs;
2. the type of activity; and
3. the way in which the activity is carried out.

It is proposed that these three criteria will need to be satisfied so that an exploration or prospecting activity can be considered low impact and therefore exempt from the requirement of requiring a Programme of Work approval under the Act.

### Proposed localities where low impact activities will be authorised


It is proposed that low impact activities will be able to be authorised on any granted tenements under the Mining Act, with some exceptions such as in the following locations:

- i. Where the proposed activities are wholly or partially within Environmentally Sensitive Areas as declared by the Minister for Environment under section 51B of the *Environmental Protection Act 1986* and referred to in Regulation 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004;
- ii. Where the proposed activities are wholly or partially within non-permitted areas as described in Clause 4 of Schedule 1 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004; or
- iii. Where the proposed activities are wholly or partially within other areas of special environmental significance. These will also be listed in the Mining Regulations, and the suggested localities under this category are further outlined in Attachment 2.

### Proposed types of activities that will be considered low impact activities

It is proposed that the following activities will be low impact activities when carried out in accordance with deemed conditions, and are not within those locations listed above:

- i. Exploration or prospecting activities that involve no clearing of native vegetation;
- ii. Driving vehicles or using other mechanised equipment through vegetation that is not along existing tracks including: reconnaissance in light vehicles;
- iii. Exploration drilling if -
  - drill pads do not exceed 20 metres by 20 metres in dimension and
  - the drilling is along lines that are in a grid pattern and density of the grid is no greater than 100 metres x 100 metres or
  - the drilling is along lines that are not in a grid pattern and the lines are at least 100 metres apart at their closest point;
- iv. Clearing for construction of temporary access tracks (of no more than four metres in width) for the purpose of drilling described in (iii) above, consistent with the duration of the activity;

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- v. Clearing for construction of a temporary access track (of no more than four metres in width) if there is at least 100 metres between that access track and any other access track consistent with the duration of the activity;
  - vi. Scrape and detect operation where the total area cleared per tenement for the purpose of the operation is less than two hectares at any one time (excluding any area that has been rehabilitated in accordance with the requirements imposed by or under the Act);
  - vii. Excavation (including costeaning, soil sample, soil investigations, shafts) for the purpose of exploration sampling where:
    - excavation is at a rate less than 20m<sup>3</sup> per hectare and
    - each excavation is at least 100 metres from any other excavation at their closest point;
  - viii. Clearing for the purpose of maintenance of pipelines and ancillary infrastructure activities including around existing facilities and buildings; or
  - ix. Clearing for camp sites and storage areas, and similar incidental purposes, necessary for the activities referred to in any of the above paragraphs of this clause if the total area cleared for those purposes is less than two hectares at any one time (excluding any area that has been rehabilitated in accordance with the requirements imposed by or under the Act).

#### The proposed way in which the activity is carried out

It is proposed that all low impact activities will need to be carried out in a prescribed manner where the activity is conducted in such a manner that:

- i. It limits or avoids harm to the natural environment;
- ii. Soil erosion and other similar land degradation is limited or avoided;
- iii. To the extent practicable, surface and subsurface water quality is not detrimentally affected;
- iv. It limits or avoids impacts to flora and fauna species, habitats and ecological communities;
- v. It limits or avoids direct and indirect harm to riparian vegetation;
- vi. Cumulative disturbance (the disturbance footprint, excluding any area that has been rehabilitated in accordance with the requirements imposed by or under the Act) is limited to a maximum land area to be agreed. DMP seeks comment on what should be considered an appropriate maximum land area.

## PROPOSED ENVIRONMENTAL OBLIGATIONS AND PENALTIES

It is proposed that all tenement holders have an obligation under the Act to adhere to a general environmental duty of care with regard to conducting their activities.

To ensure effective environmental management of the authorised activity for the duration of the nominated work program, deemed conditions prescribed in regulations are proposed for prospecting and exploration that seek to operate as low impact activities.

It is proposed that the environmental obligations (deemed tenement conditions) be included in the Mining Regulations 1981 for all low impact authorised activities to adequately cover the following matters:

- i. Weed control and dieback management measures;
- ii. Making safe drilled surface holes by capping or filling, and rehabilitating within a set timeframe following completion of the work program;
- iii. Removing waste materials, rubbish, sample bags, equipment and any temporary infrastructure prior to or upon completion of the work program;
- iv. Minimising soil erosion potential;
- v. Controlling any intercepted or discharged waters;
- vi. Records to be kept relating to the authorised activity including where applicable:
  - location details of where ground disturbance associated with the activity occurred,
  - date the area was cleared and size (ha), and
  - purpose for which the clearing was conducted; and
- vii. Rehabilitating any excavations or operating areas disturbed through the activity.

It is intended that there be no duplication between current reporting mechanisms required of tenement holders and the introduction of these amendments to the Mining Regulations 1981.

There are prescribed penalties in the Act for breach of conditions. As it is proposed that these obligations be deemed conditions under the Act, any breach of these proposed obligations would attract the same enforcement and penalties as if they were specific conditions on a granted tenement. This includes that the tenement may be liable for forfeiture, or a penalty of up to \$150,000 depending on the severity of the breach.

## NOTIFICATION OF LOW IMPACT ACTIVITY COMMENCEMENT AND COMPLETION

It is proposed that the Mining Regulations 1981 require the notification of low impact activities through an on-line electronic notification process.

DMP will record all notifications received in a database and proposes to make all records publicly available via the departmental website.





Each notification of commencement and completion of low impact activity will be recorded as an “authorised activity” prescribed under the Regulations.

It is proposed that the notification for a low impact authorised activity (submitted prior to the activity occurring) include:

- i. The activity description showing that it meets the low impact criteria description in the Mining Regulations;
- ii. Spatial details of the planned activity (such as through the submission of a ‘shape file’ of the planned activity using a designated departmental spatial lodgement system to show footprint disturbance area including any clearing of native vegetation);
- iii. Specifying the duration of the planned activity; and
- iv. Evidence of authorisation to undertake the planned activity on the mining tenement (e.g. being either the holder of a granted tenement or operating under authorisation from a tenement holder via a company director/secretary authorisation attached to the notification form).

It is also proposed that the tenement holder be required to give notice to DMP of completion of low impact activity using a prescribed electronic notification form. It is proposed that this notification include:

- i. That the low impact activity has been completed;
- ii. Confirmation of compliance by the tenement holder of the prescribed environmental obligations (deemed conditions); and
- iii. The date the low impact activity and rehabilitation was completed.

## COMPLIANCE MONITORING

It is proposed that DMP record each notification for low impact activity that is deemed an authorised activity so that it can be readily included in a future desktop environmental review and potential site inspection program for compliance monitoring.

# ATTACHMENT 1

## Stakeholder Feedback Form



Government of **Western Australia**  
Department of **Mines and Petroleum**

### PROPOSED LOW IMPACT AUTHORISED ACTIVITY FRAMEWORK FOR PROSPECTING AND EXPLORATION REGULATED UNDER THE MINING ACT 1978

Section 1. Stakeholder details		
<b>Public or Confidential</b>		
Do you wish to lodge your submission 'IN CONFIDENCE'	YES	NO

Submission Details		
This submission is written on behalf of: (please select one of the following categories)	<input type="checkbox"/> Business	<input type="checkbox"/> Professional
	<input type="checkbox"/> Industry representative	<input type="checkbox"/> Academic
	<input type="checkbox"/> Government representative	<input type="checkbox"/> Other

Submission Details
Individual OR Organisation's name:

Individual / Organisation Details	
Note: the following information will <u>not</u> be placed on DMP's website	
Principal contact name:	Contact Phone number:
Email address:	

#### PLEASE NOTE:

**Typed electronic submissions are preferred and can be submitted to: [reform@dmp.wa.gov.au](mailto:reform@dmp.wa.gov.au)**

If you wish to submit a hand written submission or for other submission related queries, please contact Mr Dan Machin, General Manager Minerals South on (08) 9222 3446; or Ms Julie Mahony, Policy Officer on (08) 9222 3231.

**Confidential material** – Where a submission includes confidential and non-confidential material, the confidential material should be provided separately and clearly marked 'IN CONFIDENCE'.

**Please note:** Legal requirements such as those imposed by the *Freedom of Information Act 1982* may affect the confidentiality of public submissions.




<b>SECTION 2. Stakeholder Response Form</b>	
<b>General comment(s) on the Department of Mines and Petroleum's Proposed Low Impact Authorised Activity Framework</b>	
<b>Section: Background</b>	
Comments:    	
<b>Section: Definition of low impact activities</b>	
Comments:    	
<b>Section: Environmental Obligations and Penalties</b>	
Comments:    	
<b>Section: Notification of Low Impact Activity Commencement and Completion</b>	
Comments:    	
<b>Section: Compliance Monitoring</b>	
Comments:    	
<b>Attachment 2: List of Other Environmentally Sensitive Lands</b>	
Comments:    	

## ATTACHMENT 2

### LIST OF OTHER PROPOSED ENVIRONMENTALLY SENSITIVE LANDS

- Priority ecological communities as recognised by the Department of Parks and Wildlife
- Lands held under conservation covenants as referred to in section 30B(2) of the *Soil and Land Conservation Act 1945*
- Identified Banded Iron Formation Ranges of the Midwest and Goldfields - Interim Status Report – (Department of Environment and Conservation, 2007)
- Locations of remnant rainforest in northern WA as cited in the “Kimberley Science and Conservation Strategy” (Department of Environment and Conservation, 2011)
- Locations of mangrove protection areas/habitats – Environmental Protection Authority Guidance Statement No 1 “Protection of Tropical Arid Zone Mangroves across the Pilbara”, (Environmental Protection Authority, 2001)
- Designated wild river catchment areas as recognised by the Department of Water
- Designated geo-heritage sites registered in the Department of Mines and Petroleum geo-heritage database
- Ground water dependent ecosystems as described in the National Atlas of Groundwater dependent ecosystems
- Designated soil reference sites as cited in “Reference Soils of South West Australia” (Department of Agriculture, 2004).



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