

Operational policy

Application to vary work program conditions of an exploration permit

MIN/2015/1246
25 May 2020
Version 1.06

Purpose

This policy clarifies the limited circumstances in which a variation of conditions of an exploration permit (EP) would be considered.

The information contained in this policy reflects current departmental practice 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.

Background

An EP holder is required to comply with all permit conditions imposed under the MRA¹ and carry out the activities or pursue the outcomes of the approved work program stated for the term to the extent reasonable in all of the circumstances.²

Outcomes-based work programs allow explorers to adjust activities in response to exploration results without the need to seek approval from the department to change the work program activities. There is no need to apply to vary the work program condition of an EP that has an outcomes-based work program.

A work program for competing applications or tender processes for the grant of new EPs will usually be activities-based. This type of work program contains specific activities proposed to be undertaken over the initial term of the EP by the applicant. The successful applicant is then obliged to undertake these activities, without the ability to vary them over the initial term of the EP. The work program types for EPs are more fully described in Operational policy, MIN/2015/1254, Exploration work program and relinquishment requirements for an exploration permit, and the Work program guideline (MRA).

The holder of an EP may apply to vary the conditions of an EP under s.141C, if the variation is necessary because of:

- an exceptional event affecting the existing permit; or
- circumstances arising from the existing permit forming part of an exploration project.

¹ *Mineral Resources Act 1989*, s 141.

² *Mineral Resources Act 1989*, s 141(1)(a).

Refer to Operational policy, MIN/2015/1313, Exceptional circumstances and exceptional events.

Policy determination

Application to vary work program conditions

An EP holder should make an application to vary the work program conditions of an EP **as soon as they become aware** of the need for the amendment. To facilitate timely assessment an application should be made at least **two months** before the end of the year to which the changes apply.

An application must include supporting documentation including a statement detailing:

- the variation sought (i.e. year of tenure, current commitment and the proposed amendment);
- the activities or outcomes undertaken for the current term to date;
- if the variation is required due to an exceptional event, describe the exceptional event that has prevented the holder from meeting the current conditions;
- if the variation is required as the EP is part of an exploration project, the reason for the variation of work program conditions;
- the attempts made to meet the conditions; and
- any changes to technical or human resources to support the new rationale.

The EP holder must ensure that comprehensive information provided in support of the variation sought is equivalent to the standard expected of a new application for grant under sections 133, 136E, and 136R of the MRA. Failure to provide this information may result in the application being refused.

Before submitting an application, the holder should use the self-assessment checklist to determine if they will meet the requirements of the MRA and this policy. The checklist is part of the application form.

Decision on application to vary work program condition

In deciding an application to vary a work program condition, the decision maker will consider if:

- an exceptional event has prevented the holder completing the work program;
- the proposed variation will distribute the work program commitments over one or more other EPs within the exploration project;
- the variation is an alternative work activity that is of equal or greater value and meets or exceeds the objective of the original work program; and
- the permit holder has substantially complied with all other conditions and requirements for an EP under the MRA; for example, outstanding reports or rental payments.

Transitional provisions

For applications to vary conditions, other than to reduce the area of the permit, received but not decided by 25 May 2020, or made during the current term of the permit, the pre-amended section 141C will continue to apply.

New section 141C applies in relation to an application for a variation of the conditions of the exploration permit made after the end of the current term of the permit.

Undecided applications to vary relinquishment made before 25 May 2020 are taken to be withdrawn.

The following relinquishment requirements apply:³

- if an EP is renewed, 50% relinquishment will be necessary 5 years after the first renewal after the commencement of the new legislation; that is
 - nil relinquishment is required at the first renewal;
 - 50% of the area as existing on the commencement is due to be relinquished by the day that is 5 years after the EP is first renewed after the commencement; and
 - the remainder of the EP is due to be relinquished 10 years after the first renewal after the commencement. This marks the end of the term of the EP. Note that relinquishment may be more or less than 50% of the area at commencement depending on reallocation of relinquishment requirements for EPs within an exploration project.
- nil relinquishment applies to an EPC that is subject to section 232(1) of the *Mineral and Energy (Common Provisions) Act 2014* and no agreement has been made with the overlapping party.

The Minister may impose, remove or vary any type of conditions if there has been an exceptional event without the request of the holder of the permit (refer to Operational policy, MIN/2020/5324, Minister's power to impose, vary or remove a condition of an exploration permit).

Variations due to COVID-19

The department recognises the COVID-19 pandemic and related restrictions as an exceptional event that may necessitate EP holders applying to vary their expenditure commitments and work program.

An application to vary the conditions of the EP can be made for impacts due to COVID-19 and related restrictions under section 141C of the MRA. A streamlined application form has been developed that can be accessed [here](#). There is no fee.

All EP holders are eligible to apply, including for EPs that were granted prior to 2000 or as a result of a competitive application process. This aspect of this policy will apply to work programs for **2020 and 2021 only**.

Examples of impacts EP holders may face include the inability to source staff for exploration activities due to border movement restrictions, the inability to move specialised exploration equipment onto site, the inability to safely undertake field work due to social distancing requirements, and as a direct consequence of the economic impacts associated with COVID-19 (e.g. cash flow, low cash reserves, access to capital).

³ *Mineral Resources Act 1989*, s 857.

EP holders will need to advise why their work program has been impacted and what requested amendments are required as a result of COVID-19 and related restrictions.

If granting an application to vary the expenditure condition will affect an EP holder's work program, the holder must use the same application form to seek a variation of the work program in line with the varied expenditure.

A change to a work program could include deferring work to later years. For example, an EP work program includes drilling one well in 2020, however due to COVID-19 restrictions the holder requests a deferral of these on ground activities until 2021.

An EP with expenditure commitments and work program ending on or before 30 June 2020 will be unlikely to be able to show that the inability to comply was due to COVID-19 related restrictions as the activities should already have been well underway prior to COVID-19 related disruptions taking place from March 2020.

Once the expenditure condition is varied, a holder will only be required to comply with the reduced amount of the expenditure condition.

This will not apply to:

- any activities associated with a Mineral Development Licence; and
- conditioned relinquishment requirements for an EP.

EP holders are encouraged to carry out work program activities for the EP within the intent of the approved work program objectives for which the EP was granted. A focus on desktop work, for example data interpretation, is encouraged.

The EP holder remains subject to the requirements of the MRA, this policy and associated policies.

Document information

Availability and location: External – Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

Review date: 25 May 2022

Related documents: This policy should be read in conjunction with the Operational Policy, MIN/2015/1252, Project-based exploration administration, and Operational policy, MIN/2015/1313 Exceptional circumstances and exceptional events, and the Work Program Guideline (MRA).

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

Disclaimer

The purpose of this policy 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.