

# Operational policy

## Exceptional Circumstances

Policy number 3/2013  
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Version 1.01

### Application

This policy relates to the following provisions of the resources legislation:

- *s.393 of the Mineral Resources Act 1989*
- *s.59 and s.62 Petroleum and Gas (Production and Safety) Act 2004*
- *s.66 and s.69 of the Greenhouse Gas Storage Act 2009.*

The principles of this policy may also be applied to the Regulations that correspond to each of the resource Acts, and to any departmental decisions, policy or guideline which may require the application of the exceptional circumstances principles outlined in this policy.

### Purpose

The purpose of this policy is to provide guidance and set out the principles to be followed with respect of consideration of circumstances over which a permit holder did not have control.


This policy is written to:

- provide guidance and clarity to both industry and departmental officers
- promote consistency of permit administration and regulation across resource legislation
- ensure that key objectives of the legislation are achieved to the maximum extent possible
- promote the purpose and objectives of the resource legislation
- increase the department's timeliness and efficiency of processing permit applications and requests.

The information provided in this policy **does not limit the exercising of discretion** nor does it override legislative requirements. It does however reflect current practices within the department which may change from time to time. All changes will be published through a revised version of this policy.

### What is an exceptional circumstance?

Under the resources legislation there are provisions which require a permit applicant or permit holder to satisfy a decision maker that they have not been able to fulfil a statutory obligation due to circumstances over which they did not have control which is referred to by the department as an **exceptional circumstance**.



An exceptional circumstance is when the ability to undertake a statutory requirement of the permit applicant or holder is adversely impacted by an event that:

- is or was beyond the permit holder or applicant's control, and
- could not have been prevented by a reasonable person in the permit holder of applicant's position.

These types of circumstances may typically be force majeure events (events that may be considered impossible to control or anticipate) such as strike, crime, cyclone or flooding.

An exceptional circumstance may also be a circumstance where the holder has done everything that they are reasonably expected to, but are still prevented from meeting their statutory obligation by a third party.

If a permit holder or applicant can satisfy that there was an exceptional circumstance for not meeting a requirement, the decision maker may waive compliance or accept substantial compliance with a statutory requirement.

## **What is not an exceptional circumstance?**

Exceptional circumstances do not include common risks in the industry; these are any circumstances regarding the applicant or holders financial or technical resources or ability to manage exploration and the results of exploration. Examples of these may include, but are not limited to the following:

- failure to raise funding or obtain a financial agreement (such as a joint venture agreement) to undertake the work program;
- inappropriate time management of resources e.g. contractors or geoscientists are delayed by other projects;
- disappointing or poor exploration results, or
- transfer the permit to another party.


Such factors may influence the perceived commercial viability of the work program, and the option may be then for the holder to relinquish all or part of the area.

## **How can I demonstrate an exceptional circumstance?**

The department may consider accepting an exceptional circumstance only where the holder can provide substantial and compelling evidence which demonstrates that:

- the exceptional circumstance occurred;
- the exceptional circumstances affected the permit holder or applicant's ability to meet the requirement, and
- that the circumstance could not be reasonably anticipated, managed or avoided by the permit applicant or holder.

The type of evidence required by the department will include tangible documentation (e.g. letters, emails, technical data, maps and plans) which clearly identifies that the holder intended to comply with the permit requirement and the exceptional circumstance that prevented the holder or applicant from complying.



For example, if a permit holder is required to demonstrate that there were exceptional circumstances for not meeting a work program requirement then the permit holder should provide the following information to the decision maker:

- certified copies of documentation (made before the exceptional circumstance) that demonstrate in sufficient detail that the holder intended to carry out the work program activity in the timeframe affected by the exceptional circumstance;
- documentation that demonstrates the exceptional circumstance and how it impacted on the ability to complete the work program activity in that timeframe, and
- documentation that demonstrates why the activity could not be completed during the remaining permit term e.g. after the exceptional circumstance had concluded or elsewhere in the permit in an area not affected by the exceptional circumstance.

There may be exceptional circumstances which make it difficult or not possible to provide this type evidence, for example a flood that has impacted a place of business. In these circumstances the holder or applicant should advise the decision maker of this and the decision maker will work with the permit holder or applicant to find alternative ways to address this requirement. For example, a statutory declaration made by the applicant or holder may be required.

#### **Important note**

The department will not look favourably on submissions from applicants or holders that fail to provide this information to the department. The failure could result in a negative outcome for the applicant or holder. For example the rejection of an application to amend an initial work program under s59 and 62 of the *Petroleum and Gas (Production and Safety) Act 2004*.

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**Minister for Natural Resources and Mines**  
**September 2013**

#### **Enquiries:**

For help, information and technical support contact the MyMinesOnline helpdesk.

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## **Disclaimer**

The purpose of these policies 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.