

Operational policy

Exceptional circumstances and exceptional events

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Version 2.00

Purpose

The purpose of this policy is to provide guidance to industry by setting out the principles for an exceptional circumstance and an exceptional event that will apply to all exploration resource authorities from 25 May 2020.

The information in this policy reflects current practices within the department and does not override legislative requirements or the exercise of discretion. 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

The *Natural Resources and Other Legislation Amendment Act 2019* introduced the concept of an *exceptional event*, which is different to an *exceptional circumstance* referred to in other provisions of some of the resources Acts in Queensland.

An exceptional event applies to the following provisions:

- the *Mineral Resources Act 1989* (MRA) limits the circumstances in which the variation of work program conditions of an exploration permit (EP) may be approved;¹ and
- the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) limits the ability for a holder to apply for a special amendment of an authority to prospect (ATP).²
- the Minister has the power to impose, vary or remove a condition of an EP³ or an ATP⁴ at any time without application made by the holder. The exercise of this power is limited to the occurrence of an exceptional event; specifically, when there has been an event that has negatively affected the resources sector.⁵ The power may be used to the holder's benefit, to reduce or delay work program conditions or relinquishment requirements; and

¹ *Mineral Resources Act 1989*, s141C.

² *Petroleum and Gas (Production and Safety) Act 2004*, s107A.

³ *Mineral Resources Act 1989*, s141A.

⁴ *Petroleum and Gas (Production and Safety) Act 2004*, s42A.

⁵ *Mineral Resources Act 1989*, Sch 2; *Petroleum and Gas (Production and Safety) Act 2004*, Sch 2.

- the term of an EP is capped at 15 years. However, an EP holder may apply for a one-off extension during the last renewed term of the 15 years, for up to three years, if an exceptional event has prevented exploration activities being carried out during the final term.⁶ The Minister has the discretion to grant or refuse the extension only if the exploration authority holder can demonstrate compliance with the Act, and that exceptional events have occurred that prevented the holder from carrying out the approved work program for the last renewed term of the EP.⁷

An exceptional circumstance applies to the following provisions:

Section 393 of the *Mineral Resources Act 1989* (MRA) applies to a **prescribed person**, which means the holder of, or applicant for the grant of, a mining tenement, or a person who is carrying out, or intends to carry out activities for boundary definition purposes. If the prescribed person is required to comply with a provision of the MRA and can prove to the satisfaction of the Minister (or Minister's delegate) that it has been unable to comply due to:

- the neglect or default of the Minister, chief executive, Land Court, tribunal or an authorised officer, or circumstances over which the prescribed person did not have any control; and
- the prescribed person has done all that it could to comply with that provision, whether or not within any time prescribed,

the Minister may determine in writing that the prescribed person has complied with that provision and will be deemed to have complied with that provision accordingly.

Under section 62(2) of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) and section 69(2) of the *Greenhouse Gas Storage Act 2009* (GHG Act) in considering an application from an ATP holder and GHG permit holder respectively, the Minister may extend the work program when an event beyond its control has occurred which could not have been prevented by a reasonable person in their position.

Section 62(4) of the P&G Act and section 69(4) of the GHG Act enable the Minister to defer the relinquishment requirement for a period that relates to the circumstances of the amendment.

Policy determination

What is the difference between an exceptional circumstance and an exceptional event?

The difference between "circumstance" and "event" is that "circumstance" is suggestive of being influenced by the party itself or a third party, whereas "event" is something external that happens to the parties over which they have no control.

What is an exceptional circumstance and what is an exceptional event?

An exceptional circumstance and an exceptional event are both when the resource authority holder's ability to fulfil a statutory requirement is adversely impacted by a circumstance or event that:

- is or was beyond the resource authority holder or applicant's control; and

⁶ *Mineral Resources Act 1989*, s141CA.

⁷ *Mineral Resources Act 1989*, s141CB.

- could not have been prevented by a reasonable person in the resource authority holder or applicant's position.

Examples of what the department may consider exceptional events include events that are impossible to control or anticipate such as broad scale industrial action, cyclone or flooding. An exceptional event may occur when an EP holder has done everything reasonably expected, but is still unable to meet their statutory obligations.

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, set out in section 393 of the MRA.

What is not an exceptional circumstance and what is not an exceptional event?

An exceptional circumstance or an exceptional event does not include common risks in the resources sector including those regarding the holder's 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;
- a takeover bid; or
- transfer of the resource authority 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 circumstances or an exceptional event?

The department may consider accepting an exceptional circumstance or an exceptional event where the event is widely known or the holder can provide substantial and compelling evidence which demonstrates that:

- the exceptional event occurred; and
- the impact it had on the holder's ability to meet the statutory requirement; and
- the event could not be reasonably anticipated, managed or avoided by the holder.

Note that this would not limit the ability for the Minister to declare a wide scale exceptional event that leads to the Minister amending conditions for all resource authorities.

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 resource authority requirements and the event that prevented the holder from complying.

For example, if a holder is required to demonstrate that there was either an exceptional circumstance or an exceptional event for not meeting a work program condition, where the circumstance or event is not widely known, then the resource authority holder should provide the following information to the decision maker:

- certified copies of documentation that demonstrate in sufficient detail that the holder intended to carry out the work program activity in the timeframe affected by the event e.g. a statutory declaration. The holder may re-lodge, without certification, copies of documents already lodged before the exceptional event, provided that the act of re-lodgement is made clear to the decision-maker e.g. a duly executed copy of a renewal application;
- documentation that demonstrates how the exceptional event impacted on the holder's ability to complete the work program activity in that timeframe; and
- documentation that demonstrates why the activity could not be completed during the remaining term e.g. after the event had concluded or elsewhere in the resource authority in an area not affected by the event.

There may be exceptional circumstances or exceptional events which make it difficult or impossible to provide this type of evidence; for example, a flood that has impacted a place of business destroying records. In these circumstances the holder should advise the decision maker of this and the decision maker will work with the resource authority holder to find alternative ways to address this requirement. For example, a statutory declaration made by the holder may be required.

The department will not look favourably on submissions from holder that fail to provide this information to the department. The failure could result in a negative outcome.

Document information

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Contact: 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 or the Petroleum Assessment Hub on (07) 3199 8118 or email petroleumhub@dnrme.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.