

# Operational policy Public notice requirements and transitional arrangements

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Version 1.02

## Application

This policy relates to the following sections of the *Mineral Resources Act 1989* (MRA):

- s.245 Application for grant of mining lease
- s.252 Certificate of application etc.
- s.252A Issue of certificate of public notice
- s.252B Applicant's obligations for certificate of public notice

These sections are to be considered when assessing an application for a mining lease received before 27 September 2016. The principles of this policy may also be applied to the Mineral Resources Regulation 2013.

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

## Background

### Overview

This operational policy addresses the timing of a public notices for a mining lease under the MRA and EA notices under the *Environmental Protection Act 1994* (EPA). The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* amend s.152 of the EPA requiring an EA applicant to publish a public notice about the EA application "*simultaneously or together with, and in the same way as, any public notice for an application under resource legislation for a relevant tenure for the application*". This essentially means that once the CPN is issued for the ML application, and public notification of the ML application occurs, the applicant must prepare and publish an application notice under s.152 of the EPA at the same time.

### Detail

After the certificate of application (COA) is issued, the applicant, within 5 business days (or longer period if decided by the chief executive) must give each land owner a copy of the COA and the application.

Within 5 business days of the COA being given to the applicant, under s.252A of the MRA the chief executive must fix the last objection day for lodging objections to the application and give the applicant a Certificate of Public Notice (CPN). The last objection day must be at least 20 business days after the certificate is given.



The applicant then must publish the CPN within 5 business days after the certificate is given in accordance with s.252B of the MRA. Publication includes publishing a copy of the certificate in an approved newspaper at least 15 business days before the last objection day, or an approved shorter period.

Under s.154 of the EPA the application notice must also specify the period for making submissions regarding an EA application. That period must end on "*the last objection day under the Mineral Resources Act for the application*", which means that the last objection day for lodging objections that is fixed by the chief executive under s.252A will also be the last day for lodging submissions regarding the applicant's EA.

The provisions regarding the timing of public notices have been amended under the Mineral and Energy Resources (Common Provisions) Act 2014 which means this policy will not be required for applications received after September 27, 2016.

## Policy Issues

Under the amended provisions of the MRA and the EPA if an applicant is unable to meet the requirements of s.152 of the EPA, that is publish the EA application notice when they publish the public notice for the ML application, they may be in breach of the EPA.

Similarly if they do not publish the public notice for the ML application because they are waiting to reach the notification stage of the EA they will be in breach of the MRA.

The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* introduced transitional provisions for EA applications lodged before 31 March 2013. The effect of the transitional provisions is that EA applications received prior to 31 March 2013 are managed under the previous EPA process.

However the MRA does not have transitional arrangements for ML applications received prior to this date, and there is uncertainty if they should be managed under the pre-amended MRA or under the new provisions.

Furthermore the amended s.252A of the MRA no longer requires the decision maker to obtain a copy of the relevant code of environmental compliance or a draft environmental authority (EA) from EHP. For applications that were issued with a COA prior to 31 March 2013, the CPN would have been issued by the decision maker within 5 days after they were provided a copy of the code or EA.

If an ML application was issued with a COA prior to 31 March 2013 the applicant may not be able to comply with the 5 business day requirement, as it may have already expired. Therefore there is also uncertainty as to how the CPN process is to be administered under the amended s252A of the MRA.



This policy seeks to address these issues by:

- providing guidance and clarity to both applicants and departmental officers;
- promoting consistency of permit administration and regulation across resource legislation;
- removing uncertainty and inconsistency regarding public notices for ML and EA applications, and
- removing ambiguity with respect to transitional arrangements under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

## Policy Determination

The department considers that:

1. The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* does not apply to ML applications received prior to 31 March 2013. ML applications will be managed under the pre-amended s.252A of the MRA. This is to ensure that the administration of these ML applications will be in line with the EA applications that are being managed under the pre-amended EPA.
2. Section 252A of the MRA, as amended by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, will not apply to ML applications where a COA was issued before 31 March 2013.
3. In assessing ML applications made after 31 March 2013, the decision maker will have regard to the practical interaction between the MRA process and any EPA process. If practical and appropriate, the decision-maker will issue the COA in a manner that will allow the applicant to also satisfy its EPA obligations. In practice, this may mean that the COA will not be issued until after commencement of the 'Notification Stage' for an environmental authority application. This will assist the applicant's ability to comply with s.152 and s.154 under the EPA.
4. If the draft EA or advice from EHP stating that the EA application has been properly made has been received, the practical concerns about complying with the EPA and MRA public notification requirements will no longer be relevant, and the decision maker may complete their assessment and the COA and subsequent CPN can be issued.
5. Under s.150 of the EPA the notification stage is not applicable where the applicant has completed an environmental impact statement prior to lodging their mining lease application. If an environmental impact statement has been completed, the decision maker will not be required to issue the COA after commencement of the 'Notification Stage' for an environmental authority application.



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