



# The consideration of Aboriginal heritage matters in assessments under the *Mining Act 1978*

## INTRODUCTION

The manner in which the Department of Mines, Industry Regulation and Safety (DMIRS) considers Aboriginal heritage matters within its approvals under the *Mining Act 1978* has continued to be developed over the last few years. Since 2006, the practice has been that approvals under the *Mining Act 1978* require the resolution of approvals under the *Aboriginal Heritage Act 1972* to be granted before the DMIRS grants approvals under the *Mining Act 1978*.

This practice was adopted for the following reasons:

- 1) **To ensure that DMIRS met the obligations of *Environmental Protection Act 1986*.** The Environmental Protection Authority (EPA) considers Aboriginal heritage matters as an environmental factor in environmental impact assessments (see EPA Guideline 41). Section 38(5) of the *Environmental Protection Act 1986* requires that any decision making authority (including DMIRS) receiving an application that appears to be environmentally significant, to refer that application to the Environmental Protection Authority (EPA). As a result, DMIRS needs to be satisfied that a proposal is not environmentally significant before it may decide not to refer the proposal to the EPA. In response to this, by ensuring that the *Aboriginal Heritage Act 1972* approvals were obtained, DMIRS could be satisfied that referral to the EPA was not required and approval under the *Mining Act 1978* could occur.
- 2) **Ensure compliance with the *Aboriginal Heritage Act 1972*.** There has been the view that the current practices will provide additional assurance of compliance by the industry with the *Aboriginal Heritage Act 1972*. Increased compliance by the industry with all State and Commonwealth statutes will continue to support a high regard for the industry.
- 3) **Minimise workload impacts.** Approving applications, which later require amendment as a result of failing to obtain approvals under the *Aboriginal Heritage Act 1972* will require the approvals to be reassessed by DMIRS. This has led to a concern of introducing inefficiencies for DMIRS and slowing down the assessment and approval of other applications.

The current practice to await the resolution of *Aboriginal Heritage Act 1972* approvals (i.e. section 18 authorisations) before proceeding with some *Mining Act 1978* approvals has concerned some industry operators. This concern includes that the practice confuses the administrative responsibility between the Department of Planning, Lands and Heritage (DPLH) and DMIRS. There has also been some criticism that this practice has not been communicated effectively to the industry.

As a result of these concerns, DMIRS has been working with DPLH to review this practice with the intent to ensure that Aboriginal heritage matters are appropriately considered in the approval process without unnecessarily delaying the *Mining Act 1978* approvals. Once a reviewed policy for consideration of Aboriginal heritage matters within *Mining Act 1978* approvals has been developed between DPLH and DMIRS, internal procedures and guidance material for the industry will be updated. Until this occurs, the practices described below will remain in place as the appropriate QMS procedures.

## PROCESS FOR PROGRAMMES OF WORK

For Programme of Work (PoW) applications, applicants need to confirm that they have undertaken a review of the DPLH online dataset to identify whether their proposal overlaps a Registered or Lodged Aboriginal heritage site. Because of the relatively low impact associated with exploration, the decisions on these applications do not require the granting of section 18 approvals prior to reaching a decision on the PoW, however the applicant is required to have commenced consultation with the DPLH before PoW applications can be determined. On occasion this consultation may require the approval of a section 18.

## PROCESS FOR LOW IMPACT MINING PROPOSALS/PROGRAMMES OF WORK FOR PROSPECTING

For prospecting activities the same requirements apply as for Programmes of Work (above).

For activities that are considered as “mining operations”, with considerably more ground disturbance impacts than those for typical exploration or prospecting activities, DMIRS apply the same requirement as for a Mining Proposal.

## PROCESS FOR MINING PROPOSALS

Proponents should be encouraged to achieve the required approvals under the *Aboriginal Heritage Act 1972* prior to submission of their Mining Proposal.

Proponents are required to provide with their Mining Proposal:

- 1) Evidence of desktop survey(s) (DPLH Register) to identify places or objects of heritage significance that are currently known. Should the desktop survey identify a Registered or Lodged site, a copy of written consent or clearance (s18 approval) is required from the DPLH regarding the potential impact of the mining project on the identified places or objects.
- 2) Confirmation the “*Cultural Heritage Due Diligence Guidelines*” prepared by the DPLH and Department of the Premier and Cabinet have been considered to determine the level of risk (overall impact assessment) posed by the proposal. Depending on the level of risk (as determined by the Cultural Heritage Due Diligence Guidelines), evidence of **on-site survey(s)** to identify places or objects of heritage significance that are currently known or unknown may be required.

Should the outcome of a survey indicate the proposed activities will intersect with an Aboriginal heritage site, a copy of written consent or clearance from DPLH regarding the potential impact of the mining project on the identified place or objects of heritage significance is required.

If proponents cannot provide items (1) and/or (2), there are 3 options available to DMIRS; for the proponents to withdraw the mining proposal, for DMIRS to refuse the mining proposal, or for the proponent to revise the mining proposal to exclude those areas requiring DPLH clearance/consent.

## PROJECTS WHICH HAVE ALREADY BEEN REFERRED UNDER PART IV

Regardless of the type of application (i.e. PoW, MP or PoW-P), if the proposal has already been referred to the EPA, and the EPA have either determined not to assess the project, or the project has received a Ministerial Statement, then DMIRS can be assured that the environmental significance of the Aboriginal heritage matters have been considered in accordance with the *Environmental Protection Act 1986*.

As a result, if an application is part of a proposal in which the EPA has considered, and the Ministerial Statement is released where relevant, then DMIRS will proceed with assessing the application regardless of whether the *Aboriginal Heritage Act 1972* approvals are in place.

## LIASION WITH THE DEPARTMENT OF PLANNING, LANDS AND HERITAGE

In all aspects, it is important that other regulators remain informed of the decisions and deliberations of DMIRS. Therefore, where there are matters of potential complexity relating to Aboriginal heritage, officers should inform the relevant officer in DPLH. This will assist them in delivering their regulatory role and minimise unnecessary delays for the agencies or industry operators.

## OTHER MATTERS

In the application of these practices, the following is acknowledged:

- The responsibility for compliance with the *Aboriginal Heritage Act 1972* rests with the tenement holder. The requirement to first obtain approvals under the *Aboriginal Heritage Act 1972* does not limit the responsibilities of tenement holders to comply with that Act – it also does not mean that DMIRS has any additional role in ensuring compliance with the *Aboriginal Heritage Act 1972*.
- The MoU between DMIRS and the EPA does not include any reference to Aboriginal heritage matters; the obligations on DMIRS are established in the *Environmental Protection Act 1986*.
- This practice for consideration of Aboriginal heritage, as described here, is separate and unrelated to the approvals and processes under the *Native Title Act 1993* (Cth), *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), or the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) which may deal with heritage or title matters.
- The inclusion as tenement endorsement that proponents should have regard to the *Aboriginal Heritage Act 1972* is provided as notification and does not require DMIRS compliance monitoring.
- It is best practice that tenement holders liaise with traditional owners to identify and seek to protect Aboriginal heritage as early as possible within the exploration and mining process.

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