



DMIRS Transparency Initiatives – 'Guidance Note for Environmental Non-compliance and Incident Reporting' Summary Submission Process – Response to Comments

Introduction

DMIRS sought public comment on a draft guidance note for environmental non-compliances and incident reporting for a 12 week period closing on 8 February 2018. This guidance note aims to provide advice on what constitutes an environmental incident or non-compliance and DMIRS' reporting requirements. Once finalised, this guidance note will replace the current guidance note titled 'Environment Division Process for Non-compliance with *Mining Act 1978* Tenement Conditions dated July 2014'. The new guidance note combines information available for mineral, petroleum and native vegetation clearing into one document and aims to provide a broad overview of the legislative requirements relevant to environmental compliance and incident reporting.

Stakeholders were advised of the draft document release and opportunity to comment through following communications:

- Web-story published 16 November 2017
- E-newsletter article published 15 December 2017
- Draft document and survey links made available on the DMIRS consultation webpage from 16 November 2017

This document provides a record of the stakeholder comments received and DMIRS responses.

Stakeholder Comments

On 16 November 2017, DMIRS provided stakeholders the opportunity to provide feedback on the draft guidance note for environmental non-compliance and incident reporting via survey closing on the 8 February 2018.

Questions 1 and 2 of the survey required stakeholders to provide their personal details. Stakeholders were informed this information would not be made publically available as part of DMIRS response to submissions thus these questions have been excluded from this document.

A total of 9 external stakeholders provided comment on the guidance note either through the survey or separate submission during the 12 week public feedback period. DMIRS responses to the comments/feedback received are provided in Tables 1 and 2.

The key themes of the feedback received were:

- Concern regarding the 24 hour reporting timeframe for a 'reportable incident' for minerals projects operating under A Mining Proposal approved under the Guideline for Mining Proposals in Western Australia, April 2016 (the 2016 MP Guidelines).
- Level of information on non-compliance reporting provided for minerals projects operating under Mining Proposals approved under the Guidelines for Mining Proposal in Western Australia, February 2006.
- Consistency of references and terminology used in the document.
- Concern regarding duplication of incident and non-compliance reporting across government agencies.

All stakeholder comments are presented in the form they are submitted, and no edits to the text have been undertaken.

DMIRS would like to take the opportunity to thank stakeholders for their considered feedback on the Guidance Note and for providing valuable input into the process.

Table 1. Summary of the stakeholder survey question responses and comments.

Respondent number	Survey response	Additional Respondent Comments	DMIRS Response/action
3. Is the purpose of the guidance note clearly defined? (scale 1-not at all clear, 5 –clear, 10-extremely clear)			
1	2		Clarity of the document will be reviewed for the final version. The purpose of the document is to provide guidance in relation to environmental non-compliance and incidents. The legislation and statutory guidelines relevant to environmental compliance are provided in the scope of the document. Incidents and non-compliances relating to safety and dangerous goods are regulated under different legislation and not included in the scope of this document.
2	4		
3	2		
4	1 (not clear at all)	It is not clear what the difference is between “environmental incidents and non-compliance with mineral and petroleum activities regulated by DMIRS” and “non-compliance and incidents for mine and petroleum safety and dangerous goods”	
5	10 (extremely clear)		
6	4		
7	4		

Respondent number	Survey response	Additional Respondent Comments	DMIRS Response/action
4. How familiar are you with the department's Enforcement Policy? (scale 1-not at all familiar, 5 –somewhat familiar, 10-extremely familiar)			
1	4		Feedback on the level of stakeholder familiarity with the department's Enforcement Policy is noted.
2	5 (somewhat familiar)		
3	2		
4	5 (somewhat familiar)		
5	4		
6	5 (somewhat familiar)		
7	5 (somewhat familiar)		
5. How familiar are you with your compliance requirements, incident reporting requirements and the consequences for non-compliance? (scale 1-not at all familiar, 5 –somewhat familiar, 10-extremely familiar)			
1	No response		Feedback on the level of familiarity with environmental compliance and incident reporting requirements is noted.
2	4		
3	5 (somewhat familiar)		
4	5 (somewhat familiar)		
5	4		
6	4		
7	4		

Respondent number	Survey response	Additional Respondent Comments	DMIRS Response/action
6. How well does the guidance note assist in clearly describing the compliance requirements, incident reporting and the consequences for non-compliance? (scale 1-not very well, 5 –well, 10-extremely well)			
1	1 (not very well)		Clarity of the document will be reviewed for the final version. Specific comments made by respondents have been reviewed and addressed where appropriate. Definitions for petroleum and mineral incidents are provided in the relevant sections of the document. In the case of petroleum and geothermal activities, the environmental risk assessment described in the approved Environment Plan (EP) is used to categorise the environmental impact and determine the type of incident.
2	4		
3	2		
4	1 (not very well)	It's not at all clear what the difference is between a reportable and recordable incident for example. Ie what incidents are seen as moderate, or more serious than moderate?	
5	10 (extremely well)		
6	No response		
7	5 (well)		
7. How supportive are you of integrated mineral, petroleum and native vegetation guidance material? (scale 1-not at all supportive, 5 –supportive, 10-extremely supportive)			
1	1 (not at all supportive)		Stakeholder feedback on integrated guidance material is noted.
2	4		
3	2		
4	5 (supportive)		
5	5 (supportive)		
6	No response		
7	2	Prefer that the guidelines are industry focused i.e. guideline for mining industry and separate guideline for the petroleum industry.	

Table 2. Summary of general stakeholder feedback and comments:

Respondent number	Respondent Comments	DMIRS Response/action
1	Very little linkage to discussion and ranking of incidents Even less relevant content for exploration	The guidance note is intended as a holistic document which provides general guidance for all mineral activities including exploration and prospecting. The "Overview of Enforcement Process" section provides detail on the factors considered when determining the seriousness of a breach and the potential enforcement actions.
2	24hrs notification requirement from detection may not always be practicable time period with which to notify the department by.	Under Section 1.0, an initial notification to DMIRS within 24 hours for a 'reportable environmental incident' for projects operating under a Mining Proposal approved under the 2016 MP Guideline is considered reasonable and is consistent with these guidelines. All other non-compliances are required to be reported within three days of identification which is also considered a reasonable timeframe
3	The guidelines for non-compliance and reporting miss the opportunity to ensure compliance and reporting. The maximum fines are way too low for breaches of the Petroleum Act and the requirement to report lacks transparency. In an era of online reporting all breaches should be reported within an hour of the incident occurring, not three days later or 45 days later. Public confidence requires a greater degree of compliance, a greater degree of reporting in real time, increased penalties for breaches and additional consequences for breaches including the cancellation of a licence. In addition the Petroleum Act needs to be amended to include the right of landholders and traditional owners to say no to mining exploration or development on their lands. Compulsory and environmental bonds held in trust until the remediation of a project should also be included in these regulations.	Comments are noted with thanks. The guidance note provides an overview of the current requirements in regards to environmental compliance and incident reporting for activities regulated by DMIRS and the enforcement actions that may be undertaken. Changes to current legislation are outside the scope of this guidance note.
4	There is no information on how the public would find out about any reported or recorded incidents, where those details can be found. If it's not made public, why not?	Comments are noted with thanks. The guidance note provides an overview of the current requirements in regards to environmental compliance and incident reporting for activities regulated by DMIRS and the enforcement actions that may be undertaken. Changes to the current reporting requirements are outside the scope of this guidance note.

Respondent number	Respondent Comments	DMIRS Response/action
5	<p>I think it is a great improvement and makes it clear what is expected for non-compliance and incident reporting. I also think the incident form is clear and easy to use (previously companies used their own templates). However the timeframes are pretty tight for reporting. What turn around times are expected from the department in relation to submissions? The document just states an agreed timeframe. Will this be dependent upon the issue?</p>	<p>Under section 1.0, the timeframe in which an investigation report is required to be submitted will be determined on a case by case basis depending on the nature of the incident. Section 1.0 has been updated to clarify this point.</p>
7	<p>1.0 Mineral Activities Legislation</p> <p>Paragraph 3 refers to “non-compliance”. Does this refer to non-compliance with tenement conditions, non-compliance with the Act and/or Regs or all of these.</p> <p>Relevant sections of the Act are referenced in relation to Forfeiture and Penalty in Lieu of Forfeiture. This whole section would be stronger if the relevant sections of the Act for other requirements/powers were also referenced. Eg. requirements for approved POW or Mining Proposal, conditions imposed by the Minister.</p> <p>Direction to Modify Directions to Modify and Stop Work Orders are issued under Part VIA Division 2 and 3 of the Regs.</p> <p>Non-compliance and Incidents Reporting Requirements</p> <p>Paragraph 1 states that operators are required to notify the DMIRS of all non-compliances and incidents. Is this a requirement under the current Act, Regs (or tenement conditions)? If it is, reference should be made to the relevant Sections. If it's not required under the Act or Regs or tenement conditions, “required” should be replace with “expected” or “should”. Alternatively, if it is required (i.e. is a legal requirement) in some instances (when there is a specific tenement condition requiring reporting) and not legally required, (but expected) in others, then this should be stated.</p> <p>The definition of non-compliance refers to tenement condition or the regulations. Should the Mining Act also be included in this definition?</p>	<p>Section 1.0 refers to non-compliance with tenement conditions or identified potential/actual environmental harm. Section 1.0 has been updated to clarify this point.</p> <p>Under Section 1.0, reference to relevant sections of the <i>Mining Act 1978</i> have been included as a footnote.</p> <p>Comment noted with thanks. Section has been updated.</p> <p>This section has been updated to ensure appropriate terminology is used.</p> <p>Under Section 1.0, the definition of non-compliance is considered appropriate.</p>

Respondent number	Respondent Comments	DMIRS Response/action
	<p>Required Timeframes for Reporting Incidents Reporting within 24 hours of detection may not be possible on weekends. Reporting should align with DWER license incident reporting – as soon as practicable but no later than 5pm of next working day.</p>	<p>Under Section 1.0, an initial notification to DMIRS within 24 hours for a ‘reportable environmental incident’ for projects operating under a Mining Proposal approved under the 2016 MP Guideline is considered reasonable and is consistent with these guidelines. All other non-compliances are required to be reported within three days of identification which is also considered a reasonable timeframe</p>
	<p>Compliance and Enforcement Process for Breach of Tenement Conditions The title of this section should also include “or Reportable Environmental Incident”.</p>	<p>The subtitle has been updated to include ‘reportable environmental incident’.</p>
	<p>Non-compliance The last paragraph states “the department will determine the most appropriate measure depending...”. Presumably the measures taken would be in accordance with the Departmental Enforcement Policy.</p>	<p>Section 1.0 has been updated to include reference to the Departmental Enforcement Policy.</p>
	<p>3.0 NATIVE VEGETATION CLEARING PERMITS This section has no mention of timeframes for reporting (whilst the Mineral and Petroleum sections include it). Reporting within three days is mentioned in Table 2. Is this a regulatory requirement or an expectation?</p>	<p>Section 4.0 has been updated to ensure appropriate terminology is used. The structure and content of Section 3 is considered appropriate.</p>
	<p>4: Self-reporting ... Table 2: The title refers to “required timeframes”. See earlier comments regarding regulated requirements vs expected actions. This table would be better placed earlier in the guideline as it gets lost at the end. In the Mineral Activities row, “Environmental Incident” should refer to “Reportable Environmental Incident” as this is defined earlier in the guideline.</p>	<p>Section 4.0 has been updated to ensure appropriate terminology is used. The structure of the guidance note is considered appropriate.</p>
	<p>Additional comment: Many of the existing tenement conditions are redundant, poorly worded or not appropriate. There was a project some years ago proposed by DMIRS to review all tenement conditions and contemporise them. This becomes more relevant given the new guidance on report non-compliances with tenement conditions.</p>	<p>Comment noted with thanks. Consolidation of tenement conditions is being considered as part of the implementation of new 2016 MP guidelines.</p>

Respondent number	Respondent Comments	DMIRS Response/action
8	<p><i>Overview of Enforcement Process</i></p> <p><i>'The overall aim of the environmental compliance activities undertaken by DMIRS is to ensure minerals and petroleum operations achieve leading practice in environmental management.'</i></p> <p>Page 2, p2</p> <p>This appears to be contradictory to the Purpose and Objectives described on page 1.</p>	<p>Comment noted with thanks. The sentence is considered appropriate and consistent with Departmental objectives.</p>
	<p><i>1.0 Minerals Activities</i></p> <p><i>'The Mining Act 1978 (Mining Act) requires the use of all ground disturbing equipment for the purposes of exploration, prospecting and mining to have an approved Programme of Work or Mining Proposal prior to undertaking these activities.'</i></p> <p>Page 4 p1</p> <p>Reference the relevant parts of the Act</p>	<p>Under Section 1.0, reference to relevant sections of the <i>Mining Act 1978</i> have been included as a footnote.</p>
	<p><i>Non-compliance and Incidents Reporting Requirements</i></p> <p><i>'Operators are required to notify the DMIRS of all non-compliances and incidents'</i></p> <p>Page 4</p> <p>Reference the relevant parts of the Act and Insert 'reportable' before 'incidents'.</p>	<p>Section 1.0 has been updated to ensure appropriate terminology is used.</p>
	<p><i>Non-compliance and Incidents Reporting Requirements</i></p> <p><i>'A reportable, environmental incident that is required to be reported to DMIRS as defined in the 'Guideline for Mining Proposals in Western Australia, April 2016' (the 2016 MP Guidelines).'</i></p> <p>Page 4</p> <p>A clear distinction needs to be inserted that this only applies to Mining Proposals approved under the 2016 Guidelines.</p>	<p>The definition of reportable environmental incident has been updated to provide clarity as to circumstances in which this definition applies.</p>

Respondent number	Respondent Comments	DMIRS Response/action
	<p><i>Required Timeframes for Reporting Incidents or Non-compliance</i></p> <p><i>All Mining Proposals approved under the 2016 MP Guidelines will be subject to a standard condition requiring tenement holders to notify DMIRS of any reportable environmental incidents within twenty-four hours of detection.</i></p> <p>Industry considers that reporting an incident within 24 hours will be onerous, and in some circumstances impractical due to logistical and communication factors. It is considered that 72 hours is a more appropriate timeframe, and provides some degree of flexibility, noting some practical difficulties that could delay formal reporting.</p> <p>The following statement would be more acceptable:</p> <p><i>'that any reportable environmental incident should be made as soon as reasonably practical, but at the latest within 72 hours. Failure to do would be a breach of condition....'</i></p>	<p>Under Section 1.0, an initial notification to DMIRS within 24 hours for a 'reportable environmental incident' for projects operating under a Mining Proposal approved under the 2016 Mining Proposal Guideline is considered reasonable and is consistent with these guidelines. All other non-compliances are required to be reported within three days of identification which is also considered a reasonable timeframe.</p>
9	<p>1. It may be worth the Department converting the "Petroleum Recordable Incident Report Form" in to a form applicable for minerals and petroleum. This would also align with the Department's recent restructure and move towards better integration of the two areas.</p> <p>2. The document uses inconsistent titles for the "Enforcement Policy (June 2015)". The correct title should be used throughout to avoid confusion and appearance that there is more than one policy.</p> <p>3. Page 2: This sentence is long and confusing: "Compliance is the responsibility of all licence/tenement holders, operators, individuals and government to ensure the right approvals/ permissions are obtained and authorised activities are conducted in accordance with conditions or regulatory requirements." It can also be read that Government is accountable obtaining approvals. Suggest re-wording.</p>	<p>At this stage there are no plans to make any changes to the recordable incident form. The term recordable incident is defined under petroleum legislation and does not apply to mineral activities.</p> <p>The document has been updated to ensure document references are consistent.</p> <p>Comments noted with thanks. Sentence is considered appropriate.</p>

Respondent number	Respondent Comments	DMIRS Response/action
	<p>4. Page 2: Suggest re-wording this sentence: "The overall aim of environmental compliance activities undertaken by DMIRS is to ensure minerals and petroleum operations achieve leading practice in environmental management."</p> <p>To be something similar to: "The overall aim of environmental compliance activities undertaken by DMIRS is to ensure the State has a formal system in place to monitor compliance of minerals and petroleum operations, and where deficiencies are identified, to ensure these are rectified in an appropriate manner." The compliance activities should not have the focus of leading practice in environmental management. This should be achieved through other mechanisms.</p>	<p>Comments noted with thanks. Sentence is considered appropriate.</p>
	<p>5. Page 3, Figure 1: Suggest re-wording "Encouraging and Assisting" to "Promote" and changing "to facilitate" to be "for" in figure title.</p>	<p>Changes made as suggested.</p>
	<p>6. Page 5: It is recommended the 24 hours be changed to 48 hours. If an incident occurs in a remote region or depending on shift time etc, it may be difficult for a responsible person to be able to report the incident to DMIRS within 24 hours. It may also be appropriate to introduce a tiered (risk-based) reporting timeframe (similar to that used in Part IV of the EP Act) whereby significant incidents / environmental harm must be reported in a shorter timeframe whereas minor incidents (such as administrative matters, missed monitoring etc) can be reported later or during the Annual Environmental Report (for incidents with no environmental impact).</p> <p>DMIRS should be able to extend the timeframe as EP Act section 72 will ensure the State is notified of those incidents as soon as practical. Such urgent reporting of lower risk incidents will create addition work for DMIRS and those reporting without any material benefit for the environment.</p>	<p>Under Section 1.0, an initial notification to DMIRS within 24 hours for a 'reportable environmental incident' for projects operating under a Mining Proposal approved under the 2016 Mining Proposal Guideline is considered reasonable and is consistent with this guideline. All other non-compliances are required to be reported within three days of identification which is also considered a reasonable timeframe.</p>

Respondent number	Respondent Comments	DMIRS Response/action
	<p>7. Overall: DMIRS should ensure it does not duplicate existing compliance and incident activities of other Acts /Agencies eg: EPA Act Part V non-compliance reporting.</p> <p>Part V and Part IV non-compliances that require reporting to DWER should be clearly excluded from the scope so as to avoid confusion for Mineral and petroleum operators about DMIRS's scope. Similarly, Section 72 of the EP Act should not be replicated by DMIRS in the guidance or compliance activities.</p>	<p>Comments noted with thanks. Purpose of the guidance note is to provide advice on environmental compliance and incident reporting requirements under legislation administered by DMIRS.</p> <p>In regards to duplication for environmental regulation for mineral activities, this has been addressed through 2016 Mining Proposal Guidelines, which involved extensive stakeholder consultation.</p> <p>Please note that an incident report formally submitted to another Government agency may be used in place of this form where it meets DMIRS requirements (as outlined in the contents of this form).</p>