



GUIDELINES FOR CONSULTATION WITH INDIGENOUS PEOPLE BY MINERAL EXPLORERS

The DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY has prepared the following procedural guidelines to assist explorers and prospectors in gaining access to land in which Indigenous people have an interest. Set out in the following pages is an outline of the various State and Federal laws affecting land access and Aboriginal interests, as well as guidelines for companies and individuals on how best to communicate with Aboriginal communities.

In addition to these guidelines the Department can assist explorers and prospectors by providing advice and if appropriate mediation/liaison services. If you require assistance or advice, please contact the Department's Tenure and Native Title Branch, in particular;

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These liaison officers can provide information on native title claims, State and Federal legislation, access procedures, Aboriginal communities, government policy as well as dispute resolution and general liaison services.

T BULLEN
GENERAL MANAGER
TENURE & NATIVE TITLE BRANCH



Government of **Western Australia**
Department of **Mines and Petroleum**

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CONSULTATION WITH INDIGENOUS PEOPLE
BY MINERAL EXPLORERS**

**DEPARTMENT OF MINES, INDUSTRY REGULATION AND
SAFETY**

TENURE AND NATIVE TITLE BRANCH

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PART 1 - INTRODUCTION

In order to maintain the mineral resource and petroleum sector of the WA economy, it is essential to have an active and sustained exploration effort. The State Government is committed to a policy of encouraging exploration expenditure by providing secure exploration titles with as few restrictions as necessary. This will enable genuine explorers to search for and delineate the State's mineral resources.

This policy, however, must be balanced against the requirements and concerns of others with interests in the land to be explored. Some 35,000 people in Western Australia are descendants of the Aboriginal people who occupied the country at the time of European settlement. To varying degrees, these Aboriginal people have maintained their cultural identity and relationships with the land. The extent and importance of these relationships are not always appreciated or understood.

Over the last 25 years, Governments in Australia have attempted to recognise the importance of Aboriginal cultural identity and relationships to land through changes in policy and the enactment of legislation. This recognition is still developing in many areas and will continue to do so for some time to come.

These changes in government policy have already had an effect on exploration procedures. In the past, limited consultation was undertaken with Aboriginal people prior to the commencement of mineral exploration. Today, responsible exploration companies appreciate the need for Indigenous consultation prior to starting work.

The following guidelines endeavour to define the form and level of consultation - which the Government believes is required to enable exploration to be undertaken - while attempting to accommodate the legitimate concerns of Aboriginal people for the land. Adherence to these guidelines will also ensure that the various legislative requirements are satisfied.

The guidelines are for exploration activities. They are not intended to cover feasibility or development stages of resource projects. In later stages of development, much greater attention should be given to questions of social impact, employment, community participation, compensation and the effects of associated infrastructure. In developing guidelines of this nature, it is impossible to cover every situation that may arise. As such, they should be seen as an indication of the manner in which to proceed rather than as a set of specific procedures or processes. Successful consultation will ultimately depend on the spirit of trust and co-operation established between the parties involved.

PART 2 - LEGISLATIVE BACKGROUND

2.1. General

There are a number of existing West Australian legislative provisions which relate to Aboriginal interests in land. These need to be carefully considered when mineral exploration work is proposed. They are:

- Aboriginal Heritage Act, 1972;
- Aboriginal Affairs Planning Authority Act 1972;



- Aboriginal Communities Act 1979;
- Mining Act 1978;
- Aboriginal and Torres Strait Islander Heritage Act 1984; and
- Native Title Act 1993.

2.2. **Aboriginal Heritage Act 1972**

2.2.1 This Act is administered by the WA Department of Planning, Lands and Heritage (DPLH) and, inter alia, provides in section 17 that it is an offence for any person to excavate, destroy, damage, conceal or in any way to alter any “*Aboriginal site*” unless acting with the authorisation of the Registrar of Aboriginal Sites under section 16 or the consent of the Minister for Aboriginal Affairs under section 18.

2.2.2 “*Aboriginal site*” is defined in the Act (in section 5) to mean:

- (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object natural or artificial used for, or made or adapted for use for any purpose connected with the traditional cultural life of the Aboriginal people, past or present;
- (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
- (c) any place which, in the opinion of the Aboriginal Cultural Material Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;
- (d) any place where objects to which the Act applies (generally objects of sacred ritual and ceremonial significance) are traditionally stored, or to which under the provisions of the Act such objects have been taken or removed.

2.2.3 Section 62 of the Act provides a defence for site disturbance under this Act, where the person ‘did not know and could not reasonably be expected to have known’ that the place was an Aboriginal heritage site. Although there is no explicit obligation on land users to seek information about the existence or otherwise of Aboriginal sites, it is implicit in the Act and its usual operation that proponents will take reasonable care to make themselves informed. Wilful disregard of the Act may result in the Court rejecting the applicability of the ‘ignorance defence’ where there is sufficient evidence to suggest a proponent should have taken steps to obtain the requisite information. In 2003, penalties under the Act were amended. These are as follows:-

A person who commits an offence against this Act for which no penalty is specifically provided is liable, on summary conviction:-

- (a) in the case of an individual, to -

[a.1] for a first offence, \$20,000 and imprisonment of 9 months; and



[a.2] for a second or subsequent offence, \$40,000 and imprisonment for 2 years;

(b) in the case of a body corporate, to -

[b.1] for a first offence, \$50,000; and

[b.2] for a second or subsequent offence, \$100,000,

and in any case, to a daily penalty of \$1,000.

2.3. **Aboriginal Affairs Planning Authority Act 1972**

2.3.1 The *Western Australian Aboriginal Affairs Planning Authority Act 1972* (which is administered by DIA) established the Aboriginal Lands Trust. It is empowered (in section 23) to acquire and hold land and to use and manage that land for the benefit of persons of Aboriginal descent and in accordance, as far as practicable, with the wishes of the Aboriginal inhabitants of the area. This provision also empowers the Trust to consult, negotiate and enter into financial arrangement with other persons or bodies as may be necessary or desirable for the development of the land for which it is responsible.

2.3.2 These provisions of the Act relate to all land held by the Trust and not just to Aboriginal reserves.

2.3.3 The minerals and petroleum on or under land vested or held by the Aboriginal Lands Trust remain the property of the Crown and any mining or exploration is subject to the provisions of the *Mining Act 1978* and *Petroleum Act 1967*. An administrative procedure exists so that royalty and rent equivalents for mining or exploration on proclaimed reserves are paid from consolidated revenue to the Trust.

2.3.4 Many Aboriginal Reserves are the subject of a proclamation under section 25 of the *Aboriginal Affairs Planning Authority Act 1972*. Explorers and miners seeking to enter these reserves, if not themselves of Aboriginal descent, must obtain a permit through the DPLH. This obligation (see section 31) is in addition to the requirement to obtain any permit, tenement or approvals necessary under the relevant Mining and Petroleum Acts. Permits are not usually granted without the prior consent of the Aboriginal Community.

2.4. **Aboriginal Communities Act 1979**

2.4.1 Under this Act, Aboriginal communities may make by-laws relating to their community lands (which may be lands of any tenure proclaimed by the Governor to be community lands).

2.4.2 These by-laws may prohibit and regulate entry on to those lands and may regulate the behaviour of persons on those lands, in a manner and scope similar to local Government by-laws. Such by-laws may include the prohibition of alcohol.

2.4.3 Offenders are normally brought before community courts, which are convened by the Aboriginal community concerned.

2.4.4 The provisions of this legislation apply to all persons, both within and outside of Aboriginal communities. At present, only a very limited number of areas have



been proclaimed. Tenement holders will be advised of any proclaimed areas within their tenement at the time of grant.

2.5. Mining Act 1978

2.5.1 This Act provides that, except in the case of freehold land alienated before 1899, all minerals are the property of the Crown and a mining title must be obtained before any mining operations may be undertaken.

2.5.2 The Act establishes three categories of land open for mining. These are:

- (a) Crown land, including reserves for mining, general activities, public utilities (under the Land Administration Act 1997), leases for timber and pastoral purposes, townsite leases and leases for the use and benefit of Aboriginal inhabitants;
- (b) public reserves including Aboriginal reserves (sections 23 to 26); and
- (c) private land.

2.5.3 The Act provides that all Crown land (as defined) is open for mining. Anyone can apply to the Minister for the grant of a mining tenement in respect of that land. The Act also entitles the holder of a Miner's Right, with some exceptions, to carry out limited exploration and prospecting work on Crown land which is not the subject of a mining tenement, and mark out land that may be made the subject of a mining tenement.

2.5.4 Division 2 of the Mining Act prescribes the means to access land classified, as reserved land, the foreshore, seabed, navigable waters and "site for town", for mining or exploration purposes.

Aboriginal reserves that are not the subject of AAPA Act s25 proclamation:

Mining or exploration may be carried out within Aboriginal reserves by obtaining the written consent of the Minister for State Development [Mining Act s24(5)(a)]. Before granting consent, the Minister for State Development must consult the Minister for Aboriginal Affairs and obtain his/her recommendation as to whether mining should be allowed [Mining Act s24(5)(b)].

Aboriginal reserves that are the subject of AAPA Act s25 proclamation:

Mining or exploration may be carried out within Aboriginal reserves that are proclaimed by obtaining the written consent of the Minister for State Development [Mining Act s24 (7)(a)]. Before granting the consent the Minister for State Development must consult the Minister for Aboriginal Affairs and obtain his/her recommendation as to whether mining or exploration should be allowed [Mining Act s24 (7)(b)].



Section 24(7)(c) of the *Mining Act 1978* provides that even though the Minister for State Development has granted consent to mine on proclaimed reserves, entry permit requirements still apply (see section 31 of the AAPA Act and the AAPA Act regulations). In order to grant an entry permit, the Minister for Aboriginal Affairs must consult the Aboriginal Lands Trust [AAPA Act Regulations reg 8(3)]. The Aboriginal Lands Trust then consults Aboriginal communities that are either living on the land or responsible for the land affected.

2.6 **Aboriginal and Torres Strait Islander Heritage Protection Act 1984**

This Federal legislation was proclaimed in June 1984. It gives the Federal Minister for Indigenous Affairs powers to protect significant Aboriginal areas or objects which may be under threat of injury or desecration. The protection is achieved through the means of a ministerial declaration which can follow a referral from an Aboriginal person or Aboriginal group.

Undertakings have been given that consultation will take place with the State Minister before a Federal declaration is made in Western Australia.

2.7 **Native Title Act 1993**

2.7.1 The Commonwealth *Native Title Act 1993* (NTA) was enacted to accommodate the decision of the High Court in *Mabo v Queensland (No. 2)* (1992) 175 CLR 1, which recognised the rights and interests of Aboriginal and Torres Strait Islanders as a form of common law native title.

2.7.2 The main objectives of the NTA are to:

- a) provide for the recognition and protection of native title;
- b) establish ways in which future dealings affecting native title may proceed and to set standards for those dealings;
- c) establish a mechanism for determining claims to native title; and
- d) provide for, or permit, the validation of past acts invalidated because of the existence of native title.

2.7.3 Future act process

The Department of Mines, Industry Regulation and Safety (DMIRS) commences the NTA future act process by issuing notice of its intention to grant a mining tenement. Public notification – which is not applicable over determined native title claims where native title is found to exist - is given in the *West Australian* and *Koori Mail* newspapers. The notice specifies a day as the “notification day” and contains a statement to the effect that persons have 3 months from the 'notification day' to become native title parties in relation to the notice.

Any person, who is a registered native title claimant 4 months after the notification day, has a right to negotiate regarding the grant of a mining tenement, provided the native title claim was filed in the Federal Court within the 3 month period referred to above.



If the State considers that the grant of the title is not likely to:

- Interfere directly with the carrying out of community or social activities of the native title claimants or holders;
- Interfere with areas or sites of particular significance in accordance with the traditions of the native title claimants or holders; and
- Involve major disturbance to any land or waters or create rights that are likely to involve major disturbance to any land or waters concerned;

then the DMIRS can apply the expedited procedure statement of the NTA.

The notice under section 29 of the NTA may include a statement that the State considers the intended grant of the exploration tenement attracts the expedited procedure (see 3.1).

The native title party may, within 4 months of the notification date, lodge an objection with the National Native Title Tribunal against the inclusion of the expedited procedure statement.

If, after considering the objection, the NNTT determines that the grant of the tenement does not attract the expedited procedure, then the State, the miner/explorer and the native title party must negotiate in good faith with a view to obtaining the agreement of each of the native title parties to the grant of the tenement.

If no objection is lodged by the native title party within 4 months of the notification date, the State can grant the exploration tenement.

PART 3 - STATE GOVERNMENT POLICY

3.1 Policy Summary

The State Government's native title policy emphasizes the need for native title matters to be settled through agreement, rather than litigation.

Specifically the State Government is committed to progressing applications for exploration and prospecting licences through the expedited process of the Native Title Act 1993 (NTA) only after it is satisfied that the explorer has formally agreed to address Aboriginal heritage concerns within the tenement application.

3.2 Background

In April 2001, the State Government established a Technical Taskforce to assess how mineral, petroleum and land title applications can be processed with greater efficiency, while at the same time recognising and protecting the rights of indigenous people.



The Technical Taskforce found that the majority of objections made to the NTA expedited process were concerned with the protection of Aboriginal sites of significance. The Technical Taskforce recommended that the establishment of a heritage protocol between the State, Native Title Representative Bodies (NTRBs) and industry groups would enable exploration and prospecting applications to proceed under the NTA expedited procedure without objection. If an applicant for a prospecting/exploration licence agreed to enter into the heritage protocol, then the native title party would not object to the expedited procedure and the application would then proceed to grant.

In response to this recommendation of the Technical Taskforce, the Heritage Protection Working Group (HPWG) was convened by the Office of Native Title and chaired by the National Native Title Tribunal (NNTT). It comprised representatives from the State Government, NTRBs, the Chamber of Minerals and Energy (CME), the Association of Mining and Exploration Companies (AMEC), and the Amalgamated Prospectors and Leaseholders Association (APLA).

Agreement for the following NTRB regions:

- Goldfields
- Geraldton/Pilbara
- South West NTRB
- Central Desert NTRB

have been endorsed by the appropriate NTRBs, the CME and AMEC.

3.3 **Agreement Principles**

3.3.1. Future Act Processing - Expedited Procedure

The DMIRS will process applications for exploration and prospecting licences through the expedited process of the NTA only once the explorer provides evidence by way of a statutory declaration/affidavit that a regional standard heritage agreement (RSHA) exists or has been signed by the explorer and sent to an affected registered Native Title Claimant (NTC) group or that an alternative heritage agreement exists between the NTC group and the explorer.

While RSHAs contain some regional differences, similarities that occur include:

- the registered NTC agrees not to object to the tenement application being processed under the expedited regime of the NTA; and
- the explorer agrees to ensure Aboriginal sites are protected, where possible, when approved ground disturbance activity is undertaken on the tenement.



Each RSHA prescribes the level of consultation to be undertaken by parties in order to identify if a heritage survey is required and, if so, the type of survey that may be required (see clause 4 - Goldfields RSHA; clause 8 - Geraldton/Pilbara RSHA; subclause 4.1 - South West RSHA; clause 7 Ngaanyatjarra RSHA). Survey costs are also detailed with each RSHA.

For more details on RSHAs refer to Items 4.1.1 to 4.1.4 and the DMIRS website at:

<http://www.dmirs.wa.gov.au/4327.aspx>

The internet link to "Minerals - land use, titles and tenements" will enable you to access the template agreements.

NOTE: Nothing in RSHAs authorises the explorer, or any other person, to commit a breach of the Aboriginal Heritage Act or the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) or to prevent the Native Title Claim Group from taking lawful steps to ensure that the explorer or any third party does not breach either Act.

3.3.2. Future Act Processing - Right To Negotiate

If the explorer either refuses to enter into a RSHA or an Alternative Heritage Agreement (AHA) or fails to advise DMIRS that a RSHA or AHA has been signed, DMIRS will process the exploration application under the NTA right to negotiate (RTN) regime. The RTN regime is used for the processing of mining lease applications, as well as most general purpose lease applications.

It is an important requirement under the NTA for the State and explorer to negotiate in good faith as this is a pre-condition to the NNTT hearing a determination application that may be made under Section 35 of that Act.

Details on the State's negotiation protocol can be found at the DMIRS website:

<http://www.dmirs.wa.gov.au/495.aspx>

PART 4 - CONSULTATION PROCESSES

4.1. When consultation should be sought

When preliminary studies are undertaken for any proposal, Aboriginal heritage is a critical factor for consideration. Careful planning enables the applicant to determine if Aboriginal heritage surveys have previously been undertaken within a particular prospecting or exploration licence. This information could save valuable time in the future. Aboriginal heritage issues should also be an integral part of any project as early as the exploration stage and prior to the commencement of any ground disturbing



activity. By considering Aboriginal heritage issues within the initial project stages, potential delays can be more readily avoided. This type of careful preparation not only gives the applicant an insight into how heritage issues may impact upon later project stages, but also allows adequate time to make cost saving alterations or adjustments.

4.1.1 Goldfields RSHA

Clause 4 of the Goldfields RSHA enables parties to the agreement to consult each other in order to determine if a heritage survey is required, and if so, the type of survey required. Factors for consideration include:

- the level of activity to be undertaken by the miner;
- the extent to which land has previously been disturbed;
- if any previous assessment of the land has been undertaken;
- the methodology, standard and quality of any previous assessment; and
- if the Register of Aboriginal Sites maintained by the DPLH discloses the existence of potential heritage sites within or near the project area.

In some circumstances, other inquiries may be necessary in order to ensure the proper identification, management and preservation of Aboriginal sites within the licence area.

Subclause 5.2 enables heritage surveys to be undertaken in a cooperative fashion.

The explorer should consider commencing the consultation process as soon as practical after entering into the RSHA. This enables the NTC representative to manage the allocation of resources for heritage survey purposes. Early consultation by explorers is not only an important component of the RSHA process, but should also decrease delays associated with the commencement of exploration or prospecting activities.

Explorers should consider participating in the heritage survey process prior to conducting any ground disturbing activity associated with exploration or prospecting. By conducting 'blanket heritage surveys', whereby tenements within a specific geographic area are surveyed simultaneously and in a cooperative manner, savings in both cost and time should be achievable. An agreed budget (in accordance with clause 7 of the RSHA) for a cooperative, 'blanket' heritage survey has proven to deliver economies of scale.

Prior to conducting a 'blanket' or cooperative heritage survey in a particular area, the coordinating anthropologist may invite explorers or prospectors to participate in the survey before they have initiated the consultation process.



4.1.2 Yamatji RSHA

Clause 5 of the Yamatji RSHA requires the explorer, on an annual basis, to provide a summary of the nature, location and timing of exploration activities on tenements located within a native title claim (NTC) area. The explorer is also required to inform the NTC group of any significant alterations to that summary. The NTC group then uses this information to assess the likely impact of exploration or prospecting activities on the cultural heritage of the area. Any concerns held by the NTC group would then be communicated to the explorer.

Further consultation must be undertaken to examine whether a “heritage notice” is required (clause 7). The “heritage notice” is used in the consultation process to determine if a heritage survey is required and, if so, the type of survey required (clause 8). The information to be disclosed in the heritage notice is described in Schedule 1 of the Yamatji RSHA.

The explorer should ensure that sufficient time is given to the NTC groups to allow them to consider the information disclosed in the heritage notice, conduct all necessary consultation and undertake a heritage survey, if required, prior to conducting any ground disturbing activity. The NTC representative will be able to provide indicative timelines for consultation as well as the heritage survey process.

4.1.3 South West RSHA

Subclause 4.1 of the South West RSHA outlines when consultation should commence and sets out the minimum standard of information to be provided by the explorer to the NTC representative. This information is then used to determine whether a heritage survey is required and, if so, the type of survey required.

If the level of exploration or prospecting activity does not exceed 'low impact' activity, the explorer is required to notify the NTC representative of the proposed activity and delineate the area of activity within the tenement. The explorer must provide this information to the NTC representative 20 days prior to commencing the activity (subclause 4.1(b)).

If the NTC representative considers it necessary [subclause 4.1(c)], they will advise the explorer of any sites to be avoided within the tenement prior to the commencement of the 'low impact' activity. A definition of what constitutes 'low impact activity' can be found under subclause 1.1 of the agreement.

Before undertaking any ground disturbing activity, other than 'low impact' activity, the explorer must provide details of the intended work to the NTC representative in the form of a survey request [subclause 4.1 (d)].

The NTC representative is obliged to disclose the results of previous surveys undertaken over the relevant area (subclause 4.1(e)).



The NTC representative has 30 days to consider the information disclosed in the survey request and advise the explorer whether a heritage survey is required and, if so, the type of survey required [subclause 4.1(g)]. Further consultation between the explorer and the NTC ensures that all parties agree to the need for a heritage survey, methodology used for the survey, and the importance of identifying and protecting Aboriginal cultural heritage.

4.1.4 Central Desert RSHA

If a work area has not been the subject of a heritage survey, Clause 5 of the Central Desert RSHA requires that the explorer gives the NTC at least 21 days notice of their intention to access land for non-ground disturbing purposes. Details pertaining to this notice can be found at subclause 5.1.

This notice enables the NTC group to consult with the explorer concerning any activities that may impact on heritage sites.

If the explorer intends to undertake ground disturbing activity, and the work area has not previously been surveyed under the terms of the agreement, a work program must be supplied to the NTC representative (clause 6). Details disclosed in the work program should meet the requirements set out at subclause 6.2.

The work program is then utilised by both parties in the consultation process to determine whether a heritage survey is required (clause 7).

Consultation should be initiated with the NTC representative as soon as practical prior to undertaking an exploration program. The NTC representative can provide indicative timeframes for the consultation process.

4.2 Who should be contacted?

4.2.1 In order to ensure that the appropriate Aboriginal people are consulted, explorers should contact the DMIRS' liaison officers in its Tenure and Native Title Branch or the DPLH, which has a number of regional offices.

If access to Aboriginal reserve land is required, tenement applicants should commence the consultation process with the relevant Aboriginal communities as soon as applications are lodged. This will facilitate the granting of an entry permit under the AAPA Act 1972.

DMIRS liaison officers will be able to provide information concerning Aboriginal community organisations within particular areas. They can also assist explorers in establishing contact with the relevant Native Title Representative Bodies (NTRB). NTC representative details are displayed on the TENGGRAPH® 'quick appraisal'. Alternatively explorers can contact the relevant regional office of the DPLH. For DPLH regional office contact details visit the DPLH website at -

<http://www.dplh.wa.gov.au/>



- 4.2.2 Explorers should initially avoid contacting individual Aboriginal people or family groups without first obtaining advice from the local, Aboriginal community organisation or from a professional anthropologist.

4.3 **Direct Consultation**

After receiving an exploration proposal, a NTRB will usually require time to contact the various individuals, groups or communities associated with a particular area. If further consultation is required, the NTRB often convenes a meeting with the groups or communities. The explorer should be prepared to explain the proposed exploration program and answer any questions that may arise. During this meeting, Aboriginal groups may suggest some modification to the timing or locational detail of the program.

The structure, scope and site of this meeting will vary widely depending upon numerous factors. For example, the size of the area, its location, the number, composition and affiliations of Aboriginal groups involved, the nature and extent of Aboriginal land relationships in the area, the land tenure, etc are all factors which should be considered.

4.4 **Ethnographic Surveys**

If, after consultation, a heritage survey is required, the survey methodology has been detailed in each agreement. The type of heritage survey will partly depend upon the nature and extent of impact, on the land, of the exploration program.

4.4.1 **Site Avoidance**

Many Aboriginal people and groups are reluctant to provide sensitive cultural information to third parties. Often, they are concerned that this information could be divulged to inappropriate persons or used in an inappropriate manner. The AHA [section 7(1)(b)] recognizes that Aboriginal groups have the right to maintain the confidentiality of such information, if disclosure is contrary to customary law or tradition. In order to maintain confidentiality and recognise cultural sensitivities, the site avoidance survey methodology has been developed.

A site avoidance survey provides the proponent with information that will enable them to successfully avoid impacting upon Aboriginal sites. However, more detailed information is not provided to the explorer. Consequently, whilst broad location information (i.e. the boundaries of areas that contain sites) and the general nature of sites will be divulged, precise locations (i.e. the boundaries of the sites themselves) and detailed cultural information will not be revealed.

4.4.2 **Work Area Clearance**

When Aboriginal groups feel uncomfortable about divulging any cultural information to proponents (or indeed heritage consultants), a work area/programme clearance survey methodology should be adopted.



Such surveys are designed to provide proponents with statements regarding the acceptability (in terms of impact on Aboriginal sites) of particular work areas or programs. To ensure the success of this survey methodology, proponents must provide a precise description of their proposal, together with high quality maps, to the relevant Aboriginal groups. This will enable Aboriginal people to make informed and accurate assessments regarding proposed works or areas that will have a negative or unacceptable impact on Indigenous sites.

4.4.3 Site Identification

By adopting this methodology, a survey of the entire tenement is usually conducted in order to physically locate and document Aboriginal sites of significance. A professional anthropologist, who works with Aboriginal groups that have a knowledge of and connection with the survey area, carries out the site identification survey. Upon completion of the fieldwork component of the survey, the anthropologist should produce a report, which presents the results of the survey and contains detailed maps of the survey area. Maps should document the territorial affiliation of the Aboriginal groups, as well as, the location and size of Aboriginal sites, including the location of any mythological tracks linking specific sites. In essence, the report should document the relationship between Aboriginal people, their sites and the land. Information contained within the report is then used to plan an exploration program with minimal impact upon the cultural heritage of the area in accordance with the provisions of the *Aboriginal Heritage Act 1972*. The terms of the agreement may provide that the report prepared for the explorer does not disclose cultural details.

NOTE: Ethnographic surveys that may be required and that are not subject to the RSHA or AHA process (eg. on granted mining or exploration tenements) are carried out by suitably qualified and experienced consultants who will need to liaise with the local Aboriginal community to be able to produce a report. (See Appendix A for a list of consultants). It is important that copies of the report and site forms if applicable be lodged with the DPLH and that its requirements are satisfied.

4.5 Department of Planninh Lands and Heritage (DPLH)

A primary role of the Heritage and Culture Division of the DPLH is to assess section 18 Notices under the *Western Australian Aboriginal Heritage Act 1972* (as amended) (WAAHA) and provide specific advice to the Aboriginal Cultural Material Committee (ACMC). The Heritage and Culture Division of DPLH also provides information to members of the general public, developers, and government agencies. The DPLH should be contacted for any comprehensive advice on Aboriginal heritage matters. Detailed information on heritage procedures may be accessed via the DPLH website at:

www.dplh.wa.gov.au



ARCHAEOLOGICAL SITES

These guidelines are primarily aimed at the protection of ethnographic sites, which focus on places that are significant to living Aboriginal people. However, the provisions of the WAAHA also apply to archaeological sites, which are places containing physical evidence of past use by, or the presence of, Aboriginal people. Examples of archaeological sites include rock paintings and engravings, stone tool scatters and quarry sites, stone arrangements, scarred trees, etc.

It is important to note, however, that many Aboriginal sites can be classified as both ethnographic and archaeological. Some rock paintings, engravings, stone arrangements, etc also have important mythological or ceremonial significance to living Aboriginal people, while important ethnographic sites, such as water sources or ceremonial places, may also have an archaeological component.

The AHA requires anyone who finds an Aboriginal site to report it to the DPLH and to avoid any disturbance to the site without the permission of the Minister for Aboriginal Affairs. As exploration personnel often encounter archaeological sites, it is important that all staff and contractors are made aware of the provisions of the Aboriginal Heritage Act 1972. Any newly discovered site must be reported to the Heritage and Culture Branch of the DPLH. This branch may be able to supply background information pertaining to the site and, in some cases, information on previously reported archaeological sites nearby.

PART 5 - ONGOING CONSULTATION

The early establishment of a mutually acceptable strategy for ongoing consultation and the provision of progress reports to the Indigenous community is an important component of a successful exploration program. This ongoing consultation process should involve nominated senior exploration personnel and representatives from the Aboriginal groups affected by the work. Both parties should establish communication protocols and procedures for meetings and other urgent business that may arise during exploration.

Special consideration, consultation, and planning should be undertaken prior to the implementation of community assistance activities. While many of these activities, such as upgrading/building roads or providing water bores can be very useful and welcomed by Aboriginal communities, it is important to ensure that the proposed activity is compatible with the community's aspirations as a whole rather than favouring a sectional group. It is also important to ensure that rehabilitation requirements under tenement conditions are not compromised by failing to rehabilitate disturbed areas, at the request of a community, without first obtaining the approval of the DMIRS.



PART 6 - FURTHER INFORMATION

Further information about Aboriginal heritage issues and exploration can be obtained from:

Tenure and Native Title Branch
Department of Mines, Industry Regulation and Safety
100 Plain Street
EAST PERTH WA 6004
Tel: 08 9222 3795
Fax: 08 9222 3808
<http://www.dmirs.wa.gov.au>

Department of Planning Lands and Heritage
PO Box 3153
EAST PERTH WA 6004
Tel: 08 6551 8002
<http://www.dplh.wa.gov.au>

DMIRS contacts for environmental issues:

The Department has two environmental groups that manage the environmental aspects of exploration in Western Australia.

One group looks after mineral resource activities, its contacts are the Manager Environment Minerals in the Perth Office on 9222 3237 and the Environmental Coordinator in the Kalgoorlie Office on 9021 9429.

The other group looks after Petroleum Resources activities and its contact is the Manager Environment Petroleum on 9222 3142.

If you have any queries relating to environmental issues associated with exploration in your area please contact one of these numbers for advice and assistance.



Appendix A

The following organisations can assist in identifying an appropriate consultant to undertake Aboriginal heritage surveys:

PROFESSIONAL ANTHROPOLOGICAL AND ARCHAEOLOGICAL ORGANISATION IN WA

AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS (AACCA)

Contact: Ms Christine Martin
PO Box 197
NEDLANDS WA 6009
Tel: (08) 9384 5503

THE AUSTRALIAN ASSOCIATION OF PROFESSIONAL AND CONSULTING ANTHROPOLOGISTS AND ARCHAEOLOGISTS

Contact: Ms Jacqueline Harris
26 Camelia Street
NORTH PERTH WA 6006
Tel: (08) 9328 7973
Fax: (08) 9328 7973
Email: aapcaa.asn.au

THE ANTHROPOLOGICAL SOCIETY OF WESTERN AUSTRALIA INCORPORATED

Contact: Ms Marianne Yrke
Secretary
Anthropological Society of WA
C/- Department of Anthropology
University of WA
NEDLANDS 6907
Tel: (08) 9384 5338
Fax: (08) 9384 5338
Email: mia@cyllene.uwa.edu.au.

In addition, Western Australian Aboriginal Representative Bodies can provide information on heritage consultants (see Appendix B for contact details).



WESTERN AUSTRALIAN ABORIGINAL REPRESENTATIVE BODIES

GOLDFIELDS LAND & SEA COUNCIL

PO Box 10006
KALGOORLIE WA 6430

14 Throssell Street
KALGOORLIE-BOULDER WA 6430
Tel: (08) 9091 1661
Fax: (08) 9091 1662

KIMBERLEY LAND COUNCIL

PO Box 2145
BROOME WA 6725

36 Pembroke Road
BROOME WA 6725
Tel: (08) 9194 0100
Fax: (08) 9193 6279

CENTRAL DESERT NATIVE TITLE SERVICES

76 Wittenoom Street
EAST PERTH WA 6004
Tel: (08) 9425 2000
Freecall: 1800 189 936
Fax: (08) 9425 2001

SOUTH WEST ABORIGINAL LAND & SEA COUNCIL

PO Box 4112
PERTH WA 6979

HomeTown Centre
1490 Albany Highway
CANNINGTON WA 6107
(behind Clark Rubber)
Tel: (08) 9358 7400
Fax: (08) 9358 7499

PILBARA NATIVE TITLE SERVICE

PO Box Y3072
East St George's Terrace
PERTH WA 6832

Level 8,
12-14 The Esplanade
PERTH WA 6000
Tel: (08) 9268 7000
Fax: (08) 9225 4633

YAMATJI MARLPA ABORIGINAL CORPORATION

PO Box 3072
Adelaide Terrace
PERTH WA 6832

Level 8,
12-14 The Esplanade
PERTH WA 6000
Tel: (08) 9268 7000
Fax: (08) 9225 4633