



GOVERNMENT OF
WESTERN AUSTRALIA

Capability and Capacity for Environmental Assessment and Compliance Activities

Position Paper

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Implementation of the Government's response to the Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia



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1. INTRODUCTION

On 5 September 2017, the Western Australian Government (the Government) announced an Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia (the Inquiry). The Inquiry handed its final report (the Report) to the Government on 12 September 2018. The Report contains 91 findings and 44 recommendations.

The Report noted there were a variety of submissions reflecting differing views on the current or potential regulatory regime for petroleum activities and its appropriateness to regulate hydraulic fracture stimulation activities. These submissions indicated that there may be a perception within some parts of the community that the Government is not sufficiently resourced to effectively enforce the relevant regulatory requirements for petroleum activities occurring in Western Australia.

The Report noted that whatever the regulatory arrangements, any regulator needs adequate capacity and capability to competently and effectively execute their duties.

1.1 Purpose of this paper

The purpose of this paper is to provide the State Government's response to Recommendation 43. This paper provides an overview of the Government's capability and capacity to regulate petroleum activities through established processes in accordance with statutory requirements. It describes the regulatory functions performed by each agency, the expertise employed by the agencies in those regulatory functions, the interaction between regulators to support the delivery of an effective regulatory regime, existing arrangements and cost recovery.

Recommendation 43: The capability and capacity for the environmental auditing and compliance functions of government must be sufficient to assure environmental protection and safety, so this must be adequately resourced and include cost recovery from industry.

1.2 Scope

The State Government holds the position that the same regulatory effort is required to regulate unconventional resource development (inclusive of hydraulic fracture stimulation) as compared to conventional resource development, i.e. the regulatory work between the two types of resource development is not largely different. However, this paper is addressing recommendations of the Inquiry into hydraulic fracturing. Therefore, the immediate application of the recommendations or their intent will be limited to projects involving use of hydraulic fracturing.

2. CAPABILITY AND CAPACITY FOR ENVIRONMENTAL ASSESSMENT AND COMPLIANCE ACTIVITIES

The regulation of petroleum activities in Western Australia primarily occurs through two Government agencies: the Department of Mines, Industry Regulation and Safety (DMIRS) and the Department of Water and Environmental Regulation (DWER).

2.1 Department of Mines, Industry Regulation and Safety

DMIRS regulates petroleum activities in accordance with the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969*, and the *Petroleum (Submerged Lands) Act 1982* (together, referred to as the Petroleum Acts) and subsidiary legislation.

DMIRS has teams that specifically deal with petroleum titles and acreage release, compliance with annual fees and rents, and the collection and auditing of royalties. However, on a technical level, DMIRS regulates petroleum activities across three distinct functions: environmental management, management of well integrity and the field dynamics and safety.

2.1.1 Environmental Management

DMIRS regulates environmental management of petroleum activities through environment plan application, oil spill contingency plan and ongoing reporting obligations imposed by the Environment Regulations under each of the State petroleum acts.

A team of dedicated environmental officers administer these requirements who undertake compliance activities, environmental assessments, and provide advice in relation to best environmental practice for petroleum resource development.

Broadly, these officers are specialists in their field and hold a range of qualifications; primarily Bachelor of Science degrees in environmental science and natural resources management. These officers have up to date knowledge of leading environmental management practices applicable to resources development and are experienced in identifying, assessing and mitigating unacceptable risks to the environment.

The environmental team has a comprehensive forward looking compliance program to regulate petroleum activities in Western Australia, which results in every petroleum activity being assessed in some form each calendar year.

A primary function, and the most visible form of regulation occurs in the form of physical on-site inspections of active petroleum activities.

Scheduled site inspections follow a rigorous risk assessment approach for prioritisation. Unscheduled inspections are also undertaken by DMIRS as required. Site inspections are complemented by the assessment of various reports submitted at intervals specified in the legislation.

The reported information is consolidated with additional supporting information which is provided to DMIRS in the form of an annual environmental report. The annual environmental report must be provided at agreed intervals but not less often than annually, and is used to determine compliance with the environmental performance objectives and environmental performance standards in the environment plan, and the implementation strategy in the environment plan.

The compliance program is underpinned by DMIRS' regulatory compliance assessments. For instance, DMIRS assesses environment plans for petroleum activities that must demonstrate all environmental risks and impacts associated with a petroleum activity are reduced to as low as reasonably practicable and to an acceptable level; and at all times be carried out in a manner consistent with the principles of ecologically sustainable development.

An environment plan must include an oil spill contingency plan in accordance with legislative requirements. Oil spill contingency plans set out the details of preparations to be made for the possibility of an oil spill, emergency response arrangements to be implemented if an oil spill occurs, and recovery arrangements to be implemented if an oil spill occurs. Together, these assessment activities form the foundation of DMIRS' compliance program.

To assist DMIRS' assessments, where appropriate, DMIRS consults specialist subject matter experts across government through administrative agreements and memoranda of understanding e.g. the referral of matters for specialist ground water advice from DWER as a standard practice. For a number of years, such inter-agency referral arrangements have proven to be effective and appropriate mechanisms to consider regulatory objectives and technical risks.

2.1.2 Resource Management

DMIRS regulates the management of petroleum and geothermal operations across Western Australia through well management plans and field management plans under the Resource Management and Administration Regulations under each of the State petroleum acts. A team of petroleum engineers, well integrity specialists, resource geologists, geotechnologists, and reservoir analysts administer these requirements. These technical specialists are suitably qualified and have extensive experience and knowledge of conventional and unconventional resource development, geothermal energy, well design, reservoir management, petroleum geology and the local geology unique to Western Australia.

These specialists perform technical assessments of petroleum operations for compliance with good oil-field practice and legislative requirements through various assessment activities including site inspections and desktop assessments.

The integrated compliance program accounts for all petroleum operations occurring in Western Australia and includes well site inspections to evaluate operations relating to oil and gas wells, monitoring the integrity of all active wells and ensuring the risks associated with these operations are maintained to as low as reasonably practicable.

Similar to its approach to environmental management, DMIRS is also able to leverage specialist expertise knowledge across government by referring specific matters to other regulatory bodies through administrative agreements as a standard practice.

DMIRS acknowledges the changing nature of the petroleum industry and the new and innovative technologies and practices being developed. DMIRS is confident the capability of its compliance team together with existing inter-agency arrangements provide effective regulation of the petroleum industry. DMIRS will continue to monitor the state of the petroleum industry to ensure it has sufficient capability and capacity for the environmental compliance assessment commensurate with industry activity and to assess whether additional resources or training are required.

2.2 Department of Water and Environmental Regulation

DWER has teams undertaking compliance and enforcement functions that can draw upon the specialist expertise within the Department, including hydrogeologists, engineers, ecologists and scientists, and where necessary, leveraging specialist expertise knowledge across government by referring specific matters to other regulatory bodies.

DWER audits compliance with:

- conditions of Ministerial Statements issued under Part IV of the *Environmental Protection Act 1986* (EP Act);
- works approval and licence conditions issued under Part V of the EP Act; and
- enforcement action as appropriate.

DWER uses a variety of proactive and reactive methods to monitor compliance including compliance audits of conditions, reviews of compliance assessment reports, on-site inspections, pollution response to emissions and stakeholder engagement.

DWER's compliance and enforcement activities are:

- risk based – targeted to the premises, activities and water resources that represent, or are at, the greatest level of risk;
- evidence based – to guide decision making on enforcement responses;
- transparent – clearly communicated to industry, community and government;
- effective regulation across government – with regard to other regulatory agencies roles and responsibilities;
- consistent – applied consistently across all sectors of industry, the community and government; and
- responsive – activities undertaken in a timely manner.

2.2.1 Compliance with Part IV Ministerial Statements

The results from the compliance audits are used to identify areas to improve proponent's implementation of their proposals, plan and improve future compliance programs and provide feedback on the effectiveness of Ministerial Statements and implementation conditions to Environmental Protection Authority Services.

When non-compliance with an implementation condition or proponent commitment of a Ministerial Statement is identified, the proponent is issued with a Notice of Non-Compliance, detailing actions required to rectify the issue and regain compliance.

Section 48(1a) of the EP Act requires the Minister for Environment to be notified of each non-compliance, which enables a range of actions to be undertaken if required.

2.2.2 Compliance with Part V works approvals, licences and permits

DWER undertakes environmental regulation functions, principally under the Part V of the EP Act, of licensing, approvals, compliance and enforcement in relation to:

- emissions and discharges;
- waste;
- noise; and
- clearing of native vegetation.

Licences and works approvals and clearing permits authorise activities that may otherwise be unlawful. DWER's regulatory functions include ongoing reviews and compliance of activities to ensure that they do not pose unacceptable risks to public health or the environment. DWER plans its compliance activities annually, setting inspection targets and reporting on its performance openly and transparently.

3. EXISTING COST RECOVERY MECHANISMS

Recommendation 43 of the Report provides that the government's environmental auditing and compliance functions ought to be adequately resourced and include cost recovery from industry. This section describes the existing cost recovery mechanisms in operation.

3.1 Department of Mines, Industry Regulation and Safety

DMIRS is adequately resourced at this point in time considering the level of industry activity. DMIRS will monitor the level of industry activity and growth to ensure it is adequately resourced in the future. Although, under the Petroleum Acts, there is currently no cost recovery mechanism imposed for the provision of petroleum environmental management, DMIRS' existing cost recovery arrangements for titles and some components of resource management (approximately 60 per cent cost recovered) and safety (100 per cent cost recovered), are considered adequate at this point in time. Environmental assessments for native vegetation clearing, administered under delegation of the EP Act, are cost recovered.

3.1.1 Cost recovery for titles administration and resource management


Through the Petroleum Acts, the government imposes fees and charges for petroleum applications for title administration and some components of resource management. There is currently no cost recovery mechanism for the provision of environmental regulatory activities for the petroleum industry.

The administration of petroleum titles and some aspects of resource management activities are approximately 60 per cent cost recovered. The Regulations made under the Petroleum Acts prescribe the relevant fees and charges applicable to petroleum title holders and operators as at 1 July 2019.

The fees administered by DMIRS include:

- annual fees (for the provision of annual administration and maintenance of petroleum titles);
- applications (for the assessment and approval of various petroleum title applications);
- other applications (for various miscellaneous administrative services); and
- registrations (for the administration of dealings and transfers in relation to petroleum titles).

Through the Annual Budget Process, these fees and charges are reviewed and amended to ensure they are reflective of input costs and are making adequate progress towards achieving full cost recovery where appropriate.



Historically, fees and charges have been reviewed in accordance with changes in the Consumer Price Index, however for the 2018-19 and 2019-20 financial years, the Government increased petroleum fees and charges by 5 per cent (not inclusive of the costs of providing petroleum environmental management regulatory services). These increases are an appropriate adjustment to ensure the fees and charges for petroleum activities are reflective of the estimated cost of providing the regulatory services.

3.1.2 Cost recovery for environmental regulation

Prior to commencing operations, a petroleum operator may need to undertake native vegetation clearing to prepare a site. DMIRS assesses native vegetation clearing permits for the petroleum sector under delegation of the EP Act. Native vegetation clearing permits have a degree of cost recovery through application fees that are calculated on the type of clearing permit, area applied to be cleared and its location. The new fee structure that commenced on 1 July 2019 was designed to achieve greater cost recovery of the cost of administering and assessing clearing permit applications.

3.2 Department of Water and Environmental Regulation

3.2.1 Part IV of the *Environmental Protection Act 1986*

There is currently no cost recovery mechanism for the provision of environmental regulatory activities such as site inspections, audits and desktop reviews of compliance with conditions on Ministerial Statements for projects assessed under Part IV of the EP Act.

An Exposure Draft Bill to amend the EP Act was released for consultation on 28 October 2019, along with a discussion paper on the proposed changes. The Bill includes a new head power allowing for cost recovery in relation to the referral, assessment and implementation of significant proposals. The Government is currently exploring models of cost recovery that will be imposed by way of regulations after a head power is inserted into the EP Act.

3.2.2 Part V of the *Environmental Protection Act 1986*

Annual fees and charges apply to prescribed premises regulated under Part V of the EP Act. Oil and gas production is a relevant category for premises prescribed as under Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations).

Under Category 10 of Schedule 1 of the EP Regulations, premises on which 5,000 tonnes or more per year of crude oil, natural gas or condensate is extracted and processed are 'prescribed premises' for which works approval and annual licence fees apply. DWER's role is to regulate the construction and operation of the above-ground facilities that process natural gas to produce purified natural gas or liquefied hydrocarbon gases, after it has been extracted from below the ground.

4. CONCLUSION

The Government acknowledges the concerns raised by various submissions within the Report and Recommendation 43. The Government has competent and highly skilled teams that administer a robust regulatory regime under petroleum and environmental legislation to effectively regulate petroleum activities. Existing cost recovery mechanisms under petroleum titles and prescribed premises are sufficient for the current level of staffing required based on current industry activity. The Government may consider amending existing cost recovery mechanisms in future where necessary, such as the current consideration of cost recovery for compliance activities under Part IV of the EP Act.