



GOVERNMENT OF  
WESTERN AUSTRALIA

# **RESPONSE TO PUBLIC SUBMISSIONS -** PROPOSED STAKEHOLDER ENGAGEMENT AND CONSULTATION GUIDE

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September 2020

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

## INTRODUCTION

The purpose of the *Proposed Stakeholder Engagement and Consultation Guide* (Consultation Paper) was to seek comment and feedback about the proposed addition to the *Guideline for the Development of Petroleum and Geothermal Environment Plans in Western Australia* (EP Guideline). The EP Guideline is published on the Department of Mines, Industry Regulation and Safety's (DMIRS) website, and the proposed addition addresses stakeholder engagement and consultation relating to hydraulic fracturing activities.

The addition seeks to ensure a registered holder of a petroleum title within “an existing petroleum authority area” develops and implements a Stakeholder Engagement Strategy, which includes communication and engagement with stakeholders as a priority at the earliest opportunity and throughout every stage of the lifecycle of a petroleum project associated with hydraulic fracturing.

The aim of a Stakeholder Engagement Strategy is for the registered holder to demonstrate a commitment to social responsibility and maintaining this over the project lifecycle.

An area of the State is an ‘existing petroleum authority area’ if:

- there was a petroleum authority (i.e. an exploration permit, drilling reservation, retention lease or production licence) in force in respect of the area on 26 November 2018; and
- in the period since that day there has always been a petroleum authority in force in respect of the area; and
- there is currently a petroleum authority in force in respect of the area.

The EP Guideline, which outlines the Government's expectations, is designed to assist petroleum, geothermal, and pipeline operators in developing an Environment Plan (EP) that meets the requirements of the Petroleum and Geothermal Energy Resources (Environment) Regulations 2012, the Petroleum (Submerged Lands) (Environment) Regulations 2012, and the Petroleum Pipelines (Environment) Regulations 2012 (the Environment Regulations).

## BACKGROUND

The State Government announced the establishment of the Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in Western Australia (the Inquiry) in September 2017, and enacted the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017 in December 2017 to prohibit hydraulic fracturing in the South West, Peel and Perth Metropolitan regions; and impose a moratorium on hydraulic fracturing for the rest of the State, pending the outcome of the Inquiry.

In September 2018, the Inquiry handed its Report to the Minister for Environment. The Report, containing 91 findings and 44 recommendations, was released publicly in November 2018 via the Inquiry's [website](#).

In July 2019, the State Government released its [Implementation Plan](#), being the Government's response to the Inquiry. Implementation Plan Action 4 responds to the Inquiry's Recommendations 22, 23, 25, 29 and 30.

## CONSULTATION

The Consultation Paper was released on the Implementation Website for public comment from 19 December 2019 to 16 February 2020, with eight stakeholders providing feedback.

The key themes of this feedback were:

- Administrative amendments to the EP Guideline (including consistency of terminology and duplication of information).
- Engagement and consultation with relevant stakeholder (including methods for consultation, timeframes, availability of resources, and discussion topics).
- Land access and rights of landholders.
- Transparency of information (relating to stakeholder consultation, and exploration and production activities).
- Compliance associated with stakeholder consultation (pre and post activity approval).
- Financial considerations.
- Management of environmental impacts.
- Government policy and processes.

The State Government thanks all stakeholders for their considered feedback, and provides responses on the following pages.

#	Comment theme	Response/Action
1	<p>Review terminology in the proposed addition to the EP Guideline for consistency:</p> <ul style="list-style-type: none"> <li>• The terms 'community', 'local community', and 'affected communities' are used interchangeably.</li> <li>• The terms 'must' and 'should' to be used appropriately.</li> </ul>	<p>Prior to amending the EP Guideline, terminology will be reviewed for consistency, and compliance with legislative requirements.</p>

#	Comment theme	Response/Action
2	Definition of relevant stakeholders associated with a hydraulic fracture stimulation project to be clarified.	<p>The Environment Regulations require the EP to include a report on all consultations between the operator and relevant authorities and other relevant interested persons and organisations in the course of developing the EP.</p> <p>The proposed addition to the EP Guideline states that the 'Stakeholder Engagement Strategy should identify all stakeholders relevant to the hydraulic fracturing activity, taking into consideration the activity type, location, potential impacts and risks (planned activities and potential unplanned events), and community interests or concerns or Government approval requirements'.</p> <p>The definition of relevant stakeholders to a hydraulic fracturing activity is therefore dependent on the specific details associated with the proposed activity.</p> <p>While it is not DMIRS intention to be prescriptive in this regard, further clarification and guidance regarding 'relevant stakeholders' will be provided in the EP Guideline.</p>
3	Definition of hydraulic fracture stimulation activities should align with the definition provided in the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017.	<p>DMIRS agrees the definition of hydraulic fracturing activities in the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017 should be referred to for consistency.</p> <p>DMIRS agrees the definition of hydraulic fracturing activities in the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017 should be referred to for consistency.</p> <p>No changes to the EP Guideline are proposed.</p>
4	Proposed requirement for a social licence to operate to be replaced with a more realistic alternative.	<p>DMIRS proposes to amend the statement 'The Stakeholder Engagement Strategy should employ a risk-based approach to assist in identifying what issues will need to be addressed, as well as the style and frequency of engagement with stakeholders to ensure that the registered holder <b>not only gains social licence to operate but maintains it over the project lifecycle</b>' to 'The Stakeholder Engagement Strategy should employ a risk-based approach to assist in identifying what issues will need to be addressed, as well as the style and frequency of engagement with stakeholders to ensure that the registered holder <b>is demonstrating a commitment to social responsibility and maintaining this over the project lifecycle.</b>'</p>
<b>Stakeholder engagement and consultation</b>		
5	Duplicated information in the current Guideline and the proposed addition should be removed.	<p>Where possible, DMIRS will remove duplicated information from the proposed addition to the EP Guideline so the text in this section is specific to hydraulic fracturing activities.</p>

#	Comment theme	Response/Action
6	Level of engagement with relevant stakeholders required for hydraulic fracture stimulation activities should be clarified.	<p>The proposed addition to the EP Guideline states ‘the Stakeholder Engagement Strategy should map relevant stakeholders, and detail the level of engagement necessary for consultation, guided by the level of the impact of the proposed exploration activity and the need to demonstrate how potential risks and impacts to stakeholders can be reduced to as low as reasonably practicable (ALARP).’</p> <p>The proposed addition to the EP Guideline aims to provide clarity to operators regarding consultation expectations associated with hydraulic fracturing activities without being prescriptive in nature.</p> <p>The level of engagement with relevant stakeholders is therefore dependent on the specific details associated with the proposed activity, taking into consideration the activity type, location, potential impacts and risks (planned activities and potential unplanned events), and community interests or concerns, or Government approval requirements.</p> <p>While it is not DMIRS intention to be prescriptive in this regard, further clarification and guidance regarding the level of engagement with stakeholders will be provided in the EP Guideline, and will align with other jurisdictions where possible.</p>
7	Prescription relating to stakeholder consultation during individual project phases should be removed, and consideration should be given to the practical availability of information.	<p>The proposed addition to the EP Guideline states ‘engagement and consultation should be a priority at the earliest opportunity and throughout every stage of the lifecycle of a petroleum project associated with hydraulic fracturing.’ All relevant information about the proposed activities should be provided to stakeholders at this time.</p> <p>The discussion topics listed in the guidance material are not intended to be prescriptive, and have been included as a guide only. These topics may or may not be relevant to the proposed activity, or to the particular stage of the project. Individual stakeholders may also have other specific requirements for discussion.</p> <p>The Stakeholder Engagement Strategy should outline when and how often stakeholders would be consulted. Ongoing stakeholder consultation provides opportunities for relevant information about the proposed activities to be provided to stakeholders as it becomes available.</p> <p>No changes to the EP Guideline are proposed.</p>

#	Comment theme	Response/Action
8	A reasonable timeframe for consultation with stakeholders should be provided in the proposed addition to the EP Guideline.	<p>In relation to the timeframe, relevant stakeholders should be provided with adequate time for consultation to occur. The proposed addition to the EP Guideline states:</p> <ul style="list-style-type: none"> <li>• Engagement and consultation should be a priority at the earliest opportunity.</li> <li>• When undertaking consultation, stakeholders should be provided with a reasonable timeframe to review, consider, and respond to the information provided.</li> <li>• The period of time provided should be appropriate for the stakeholders being consulted and the amount and complexity of the information.</li> </ul> <p>It is not possible to define a 'reasonable timeframe' for consultation with stakeholders. The timeframe for consultation is dependent on the specific details associated with the proposed activity, and the potential impacts that activity may have on relevant stakeholders.</p> <p>The timeframe an operator allows for stakeholder consultation should therefore be considered on a case-by-case basis in accordance with the requirements of the Environment Regulations, or other legislative requirements. All stakeholders should be provided with sufficient information and time to allow them to make an informed assessment of the potential consequences of hydraulic fracturing activities on their interests or activities.</p> <p>No changes to the EP Guideline are proposed.</p>
9	Scope, timing and method of engagement with stakeholders, and the provision of adequate resources for engagement to occur (i.e. where English is not a stakeholder's first language) should be clarified.	<p>In relation to the scope, timing, method of engagement and presentation of information to stakeholders, the proposed addition to the EP Guideline states:</p> <ul style="list-style-type: none"> <li>• Engagement and consultation on hydraulic fracturing should be a priority at the earliest opportunity and throughout every stage of the lifecycle of a petroleum project associated with hydraulic fracturing.</li> <li>• While stakeholder engagement should encompass all proposed petroleum activities, specific hydraulic fracturing consultation should commence as soon as a registered holder makes the decision to utilise hydraulic fracturing as part of its intended exploration rationale and, where possible, prior to planning the location of any petroleum wells, and associated infrastructure such as access roads.</li> <li>• The registered holder should address any potential language barriers which may impact on the ability of stakeholders to make an informed assessment of the potential consequences of the activity. For example, communication with Aboriginal people should be conducted by trusted informants in a language commonly used and understood by the local people.</li> <li>• If English is not commonly used, then translators should be available to convey information.</li> <li>• Information should be presented in a format that is readily understandable to the stakeholders being consulted with.</li> </ul> <p>No changes to the EP Guideline are proposed</p>

#	Comment theme	Response/Action
10	Specific access arrangements and consent requirements should be removed from the list of discussion topics/disclosure requirements.	<p>The information provided to stakeholders should be relevant to their specific requirements.</p> <p>The discussion topics listed in the proposed addition to the EP Guideline are not intended to be prescriptive, and have been included as a guide only.</p> <p>Any specific access arrangements or consent requirements for accessing land are made with individual stakeholders and should not be discussed in group forums. As these agreements contain commercially sensitive and confidential information, DMIRS does not expect or require this information be provided to others.</p> <p>No changes to the EP Guideline are proposed.</p>
11	Well closure, decommissioning, rehabilitation and post closure monitoring arrangements should be addressed during initial discussions with relevant stakeholders.	<p>The proposed addition to the EP Guideline identifies plans for decommissioning, rehabilitation and closure as potential discussion topics with relevant stakeholders.</p> <p>Individual stakeholders may also have other specific requirements for discussion (i.e. post-closure monitoring arrangements and responsibilities).</p> <p>No changes to the EP Guideline are proposed.</p>
12	Engagement strategy for hydraulic fracture stimulation activities should be integrated within overall project Stakeholder Engagement Strategy (i.e. not a standalone document).	<p>Stakeholder consultation is required for all proposed petroleum, geothermal and pipeline activities.</p> <p>Operators are required to implement a Stakeholder Engagement Strategy and ensure the strategy is updated regularly.</p> <p>DMIRS does not expect operators who are proposing to undertake hydraulic fracturing to develop a standalone Stakeholder Engagement Strategy. This can be integrated within the overall project Stakeholder Engagement Strategy if one already exists.</p> <p>No changes to the EP Guideline are proposed.</p>
13	Landholders, Traditional Owners and pastoral leaseholders should have the right to veto all petroleum exploration and production activities.	<p>The right to veto petroleum exploration and production activities is outside the scope of the proposed addition to the EP Guideline, however, please refer to Action 5a and 5b of the <a href="#">Implementation Plan</a>.</p> <p>No changes to the EP Guideline are proposed.</p>

#	Comment theme	Response/Action
14	Declaration of rehabilitation and title surrender should not be given until private landholder or Traditional Owner consent has been obtained.	<p>Engagement and consultation with relevant stakeholders should occur throughout every stage of the lifecycle of a petroleum project associated with hydraulic fracturing (including decommissioning, rehabilitation and closure).</p> <p>While finalisation of rehabilitation and consent to surrender are outside the scope of the proposed addition to the EP Guideline, operators are required to rehabilitate land to pre-disturbance conditions (unless approval is otherwise obtained). The operator is required to consult with landholders and relevant government agencies during this process.</p> <p>Section 98 of the <i>Petroleum and Geothermal Energy Resources Act 1967</i> requires that the Minister shall not give consent to surrender a petroleum title without having considered, among other things, compliance with regulations, plugged or closed off all wells, made good any damage to the Earth's crust and have made provisions for the conservation and protection of the natural resources.</p> <p>To this end, prior to consenting to surrender DMIRS undertakes a review of compliance with the closeout requirements of any EP to ensure that works have been completed to the satisfaction of the Minister.</p> <p>Please refer to Action 6 of the <a href="#">Implementation Plan</a> for the response relating to access arrangements.</p> <p>No changes to the EP Guideline are proposed.</p>
15	Landholders and Traditional Owners should have legal rights to protect their lands from invasive weeds and other pests.	<p>Legal rights associated with the prevention of quarantine risks are outside the scope of the proposed addition to the EP Guideline, however, please refer to Action 6 of the <a href="#">Implementation Plan</a> for the response relating to access arrangements.</p> <p>Operators are required to demonstrate that the environmental risks and impacts of the proposed activity will continuously be reduced to ALARP and be of an acceptable level. This includes quarantine which is specifically reviewed by DMIRS during the EP assessment process.</p> <p>No changes to the EP Guideline are proposed.</p>



#	Comment theme	Response/Action
<b>Transparency of information</b>		
16	A purpose built website should be created to publish all information on proposed exploration activities.	<p>Creation of a purpose-built website is outside of the scope of the proposed addition to the EP Guideline.</p> <p>However, all applications for onshore hydraulic fracturing exploration and production proposals will be referred to the Environmental Protection Authority for assessment under the <i>Environmental Protection Act 1986</i> (EP Act). As part of the environmental impact assessment process, the public will be provided with opportunities to provide feedback on these proposals.</p> <p>In addition, information relating to current proposals to undertake petroleum, geothermal or pipeline activities in Western Australia (WA) are made publicly available on the <a href="#">DMIRS website</a>. This includes EP Summaries for proposed exploration and production activities.</p> <p>No changes to the EP Guideline are proposed.</p>
17	Chemical register should include all information about chemicals to be used (including the relevant Safety Data Sheets).	<p>The chemicals register is outside the scope of the proposed addition to the EP Guideline, however, please refer to Action 9 of the <a href="#">Implementation Plan</a> for the response relating to a publicly accessible register of chemicals assessed for hydraulic fracture use in WA.</p> <p>Additionally, the DMIRS Chemical Disclosure Guideline outlines chemical disclosure requirements for petroleum (including hydraulic fracturing) and geothermal activities where products, chemicals and other substances are proposed for use 'down-hole.' This information, as well as the relevant Safety Data Sheets are made publicly available in the EP Summary via the <a href="#">DMIRS website</a>.</p> <p>No changes to the EP Guideline are proposed.</p>
18	Regulations should be introduced to enable all negotiations with landholders, Traditional Owners and the industry be open and transparent.	<p>Regulatory amendments to require negotiations between landholders, Traditional Owners and the industry be made publicly available are outside the scope of the proposed addition to the EP Guideline.</p> <p>Regulatory amendments to require negotiations between landholders, Traditional Owners and the industry be made publicly available are outside the scope of the proposed addition to the EP Guideline.</p> <p>No changes to the EP Guideline are proposed.</p>
19	Stakeholder compensation should be transparent and based on an accountable formula.	<p>Stakeholder compensation should be transparent and based on an accountable formula. Stakeholder compensation is outside the scope of the proposed addition to the EP Guideline.</p> <p>No changes to the EP Guideline are proposed.</p>

#	Comment theme	Response/Action
20	Meetings with local government bodies, government departments and the industry should be recorded and made publicly available.	<p>Requiring meetings to be recorded and made publicly available is outside the scope of the proposed addition to the EP Guideline.</p> <p>No changes to the EP Guideline are proposed.</p>
21	Stakeholder consultation (pre and post approval) should be mandatory with clear penalties for non-compliance.	<p>The Environment Regulations require the EP to include a report on all consultations between the operator and relevant authorities and other relevant interested persons and organisations in the course of developing the EP (pre-approval), and the implementation strategy to provide for appropriate consultation (post approval).</p> <p>The operator of the proposed activity must therefore demonstrate there has been an appropriate level of consultation, and an appropriate commitment to ongoing consultation before the EP would be approved by DMIRS.</p> <p>Once approval has been obtained, operators are required to comply with the EP.</p> <p>The operator of an activity commits an offence if the operator carries out the activity and there is no approved EP for that activity, or if the activity is carried out in a way that is contrary to the approved EP. Penalties for these offences are provided for in the Environment Regulations.</p> <p>The Minister may also withdraw the approval of an EP in accordance with regulation 25 of the Environment Regulations.</p> <p>Please refer to Action 13 of the <a href="#">Implementation Plan</a> for the response regarding penalties for offences under the <i>Petroleum and Geothermal Energy Resources Act 1967</i>.</p> <p>In addition, if approved under the EP Act there is a requirement to comply with the conditions of the EP Act Ministerial Statement. Non-compliance can result in significant penalties.</p> <p>No changes to the EP Guideline are proposed.</p>

#	Comment theme	Response/Action
23	An Independent Fracking Ombudsman should be implemented.	<p>The implementation of an Independent Fracking Ombudsman is outside the scope of proposed addition to the EP Guideline. However, please refer to Action 12 of the <a href="#">Implementation Plan</a> for the response relating to a central point of contact within WA Government agencies for hydraulic fracturing non-compliance complaints.</p> <p>No changes to the EP Guideline are proposed.</p>
<b>Financial considerations</b>		
24	Costs associated with stakeholder involvement in consultation should be at the expense of the operator.	<p>The costs associated with stakeholder involvement in consultation is outside the scope of the proposed addition to the EP Guideline.</p> <p>Financial expenditure, and requirements for an agreement of this nature may be a discussion topic between relevant stakeholders and the operator of hydraulic fracturing activities.</p> <p>No changes to the EP Guideline are proposed.</p>
25	Financial assurance of the petroleum industry should be implemented to address potential liabilities.	<p>Financial assurance is outside the scope of the proposed addition to the EP Guideline. However, please refer to Action 19 of the <a href="#">Implementation Plan</a> for the response addressing financial assurance relating to liabilities associated with hydraulic fracturing in WA.</p> <p>No changes to the EP Guideline are proposed.</p>
26	Landholders and Traditional Owners should be granted the right to require a bond from operators until such time as the site has been satisfactorily remediated.	<p>The use of bonds on hydraulic fracturing activities is outside the scope of the proposed addition to the EP Guideline. However Action 6 of the <a href="#">Implementation Plan</a>, whilst not introducing bonds, will address access requirements for the location, maintenance, operation and remediation of infrastructure, and compensation for residual damage to the subsequent productive use of the land, for hydraulic fracturing projects.</p> <p>No changes to the EP Guideline are proposed.</p>
<b>Environmental impacts</b>		
27	Management of environmental impacts associated with the coal seam gas industry.	<p>The environmental impacts associated with coal seam gas (CSG) exploration and production are outside the scope of the proposed addition to the EP Guideline.</p> <p>CSG, which is sometimes known as coal bed methane, has not been demonstrated to be prospective in WA and is unlikely to be so because of the different geology to Queensland and New South Wales.</p> <p>In response to industry and community calls for a State-wide approach to reducing emissions, the State Government has committed to working with all sectors of the WA economy towards achieving net zero greenhouse gas emissions by 2050.</p> <p>The broader WA climate policy is currently being developed. To view the greenhouse gas emissions policy, visit <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a></p> <p>No changes to the EP Guideline are proposed.</p>

#	Comment theme	Response/Action
<b>Government policy and processes</b>		
28	DMIRS role in engaging with the community should be clarified (i.e. during the acreage release process; on technical aspects of the petroleum industry; and to raise awareness of the regulatory frameworks in place).	<p>The Consultation Paper discusses the Government's role in stakeholder engagement and consultation associated with hydraulic fracturing.</p> <p>A separate information sheet will be developed outlining the role of Government in the stakeholder engagement.</p> <p>No changes to the EP Guideline are proposed.</p>
29	Government should provide a description of activity types that involve hydraulic fracture stimulation.	<p>Activity types involving hydraulic fracturing are outside the scope of the proposed addition to the EP Guideline, however hydraulic fracture stimulation is defined in the Petroleum and Geothermal Energy Resources (Hydraulic Fracturing) Regulations 2017 as 'the underground petroleum extraction process that involves the injection of fluids under high pressure into low permeability rock to induce fractures for the purpose of increasing the rock's permeability.</p> <p>Hydraulic fracturing can occur during three stages of well development (exploration, appraisal and production) to extract petroleum from shale and tight rock formations. The <a href="#">Proposed Stakeholder Engagement and Consultation Guide</a> (Consultation Paper) released for public comment provides some further context regarding the lifecycle of projects associated with hydraulic fracturing.</p> <p>No changes to the EP Guideline are proposed.</p>
30	Government should be mindful of potential scope creep associated with the Implementation Plan, and the impacts this may have on the resources industry.	<p>As detailed in the response to the Scientific Inquiry, the Government is committed to providing balanced and responsible policies that support economic development, new jobs, environmental protection and landowner rights.</p> <p>No changes to the EP Guideline are proposed.</p>
31	Duplication between the Stakeholder Engagement Strategy and the Environmental Protection Authority assessment processes should be avoided.	<p>As all applications for onshore hydraulic fracturing now require referral to the Environmental Protection Authority for assessment under the EP Act , any stakeholder engagement and consultation undertaken as part of this process can be used to credit stakeholder consultation requirements of the Environment Regulations administered by DMIRS (where deemed relevant).</p> <p>No changes to the EP Guideline are proposed.</p>
32	Duplication between the Stakeholder Engagement Strategy and the Code of Practice (currently being drafted) should be avoided.	<p>The Government remains committed to avoiding duplication wherever possible.</p> <p>No changes to the EP Guideline are proposed.</p>

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