

# Operational policy

## Visitor Management

### Fossicking on QPWS&P managed areas

*Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.*

#### Subject

This policy addresses the administration and management of recreational or tourist fossicking for minerals, gemstones and ornamental stones on Queensland Parks and Wildlife Service and Partnerships (QPWS&P) managed areas.

#### Purpose

The purpose of this policy is to guide QPWS&P staff in the assessment, approval and maintenance of General Permission Areas (GPA) for the purpose of fossicking on QPWS&P managed areas. This policy (and related procedural guide) relates only to the hobby activity of fossicking, all other mineral collecting activities are not covered under this policy.

This policy is to be read in conjunction with the QPWS&P *Procedural guide: Fossicking on QPWS&P managed areas*.

#### Background

##### What is fossicking?

Fossicking is defined as either the systematic or unsystematic search for gemstones, ornamental stones, mineral specimens, alluvial gold or non-vertebrate fossils on the ground's surface or by digging with hand tools. Fossicking as an activity is classed as recreational and the sale of the occasional 'lucky find' of a gemstone is allowed. However, repeated removal of fossicking materials for sale through shops or businesses, or as part of making a living, is considered commercial, and requires different approvals under the *Mineral Resources Act 1989*. Royalties are payable on fossicking materials that are the property of the Crown, but threshold exemptions of \$100,000 mean that generally most fossickers are not liable.

##### Fossicking licences

Fossicking licences are issued and administered by the Department of Resources (Resources) and are required prior to fossicking within QPWS&P managed areas.

Fossicking can occur on QPWS&P managed areas (namely resources reserves and State forests) where written permission of the landowner is granted. Due to the volume of requests to fossick, and the need to assess each area for suitability prior to giving written approval, fossicking can occur only where these areas have been approved as a GPA.

A GPA is an area where the landowner has given general permission for fossicking to occur. Once a GPA has been approved, fossickers do not require the landowner's written permission to fossick within these areas, but they must abide by any conditions of access and may under some situations be required to pay a fee.

Prior to a GPA being approved on any QPWS&P managed area, a thorough site assessment is conducted by the relevant QPWS&P regional office. Existing lessees and permit holders are notified and given the opportunity to object to the proposal to declare a GPA. Other impediments to fossicking are identified and investigated including safety aspects. Some of these impediments may intersect with other departmental responsibilities and could include apiary sites, stock grazing, mining claims, cultural heritage and native title interests.

Once all stakeholders agree, then written permission is given by the Director-General of the Department of Environment and Science (DES) to the relevant Mining Registrar within the Resources to have the area made available for fossicking as a GPA. If problems arise or the situation changes within the QPWS&P managed areas, the DES Director-General can withdraw the general permission in writing to the relevant Mining Registrar and revoke the existing GPA.

The DES website provides a current list of approved GPAs on QPWS&P managed areas where fossicking can occur.

## **Policy statement**

Fossicking can only occur on QPWS&P managed areas where these areas have been approved as a GPA.

The tenures in which a GPA may be approved within QPWS&P managed areas are limited to State forests under the *Forestry Act 1959* (Forestry Act) and resources reserves under the *Nature Conservation Act 1992* (Nature Conservation Act)

QPWS&P supports fossicking as a recreational activity within approved GPAs on QPWS&P managed areas, providing that the activity is consistent with management intent for that area. Camping will not be permitted on any GPAs.

While fossicking has the potential to be destructive or detrimental, QPWS&P will undertake careful management and appropriate monitoring to ensure that the areas do not become degraded. All fossickers in QPWS&P managed areas are required to adhere to the specific QPWS&P conditions in addition to the standard conditions for fossicking (refer to QPWS&P *Procedural guide: Fossicking on QPWS managed areas*).

A fossicking licence must be obtained prior to fossicking on GPAs within QPWS&P managed areas.

## **Legislative framework**

Fossicking as an activity within QPWS&P managed areas is governed by various pieces of legislation. The information provided below introduces some of the key points from the legislation. Further advice regarding legislative matters and interpretation of policies can be obtained from emailing: [QPWS.Estate@des.qld.gov.au](mailto:QPWS.Estate@des.qld.gov.au).

### ***Fossicking Act 1994***

The *Fossicking Act 1994* (Fossicking Act) is administered by Resources who is responsible for the issuing of fossicking licenses.

Part 3, Division 1 of the Fossicking Act and the Fossicking Regulation 2019 contain the rules and requirements for fossicking activities in Queensland. For State forests, Section 10 of the Fossicking Act states that the Act applies to a State forest only if the chief executive of the Department administering the Forestry Act has given general permission for fossicking to occur in the forest, reserve or area.

Under the fossicking legislation, fossicking cannot occur in protected areas, except for resources reserves.

Fossicking is regarded as a hobby and section 36 of the Fossicking Act states clearly the restrictions and penalties with regard to trading and selling fossicking material collected under licence.

### ***Mineral Resources Act 1989***

Should a fossicker want to expand their recreational pursuits and regularly trade or sell their fossicking finds they will need to apply for an authorisation under the *Mineral Resources Act 1989* (Mineral Resources Act) administered by Resources. Authorisations could be via a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease. The most common way to determine if an area is suitable for a commercial venture is via a prospecting permit. Section 6B of the Mineral Resources Act defines prospecting as the sampling and searching for mineral material, using only handheld implements. The removal of minerals for sale is not permitted, however other authorities can be used for this purpose.

### ***Forestry Act 1959***

Under Part 4, section 33 of the Forestry Act, the cardinal principle to be observed in the management of State forests is the permanent reservation of such areas for the purpose of producing timber and associated products in perpetuity and of protecting the watershed. In providing general permission for fossicking to occur in a State forest, the chief executive must ensure the cardinal principle is not adversely impacted.

Section 46A of the Forestry Act describes the process for the sale of fossils and quarry materials to fossickers. If a person fossicking on a State forest, timber reserve or forest entitlement area where fossicking is permitted under the Forestry Act collects not more than 1m<sup>3</sup> of fossils or quarry materials in a year, the State is taken to have sold this material to that person at no cost, and no royalty is payable for the fossils or quarry materials.

### ***Nature Conservation Act 1992***

Fossicking can only occur on resources reserve dedicated under Section 29(1)(d) of the Nature Conservation Act. A resources reserve has been declared to allow mining or exploration activities to occur with the intention of the area eventually being converted to a tenure with a higher level of protection. Activities on resources reserve, including fossicking, are permitted if they are consistent with the management principles of the tenure, which are to:

- recognise and, if appropriate, protect the area's cultural and nature resources;
- provide for the controlled use of the area's cultural and natural resources; and
- ensure that the area is maintained predominately in its natural condition.

### **Native title**

Native title rights and interests are assumed to exist over QPWS&P managed areas, regardless of the native title claim or determination status of the area. QPWS&P apply the Queensland Government's Native Title Work Procedures (NTWP) to the assessment of applications for authorities. The NTWP seek to ensure that State government dealings over land, water and natural resources may proceed validly with respect to native title rights and interests under the *Native Title Act 1993* (Cth).

### **Aboriginal and Torres Strait Islander Cultural Heritage**

Aboriginal and Torres Strait Islander cultural heritage is protected on all land tenures in Queensland under the *Aboriginal Cultural Heritage Act 2003* (ACH Act) and the *Torres Strait Islander Cultural Heritage Act 2003*. Under the ACH Act anyone who carries out a land-use activity must take all reasonable and practicable measures to ensure that the activity does not harm Aboriginal cultural heritage.<sup>1</sup> The duty of care applies to any

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<sup>1</sup> The same principles apply for Torres Strait Islander cultural heritage.

activity where Aboriginal cultural heritage is located, regardless of whether or not it has been identified or recorded in a database or register. Where Aboriginal cultural heritage has been harmed offence provisions and penalties may apply under the ACH Act, or the Nature Conservation Act where applicable.

Specific recognition, protection and conservation measures may be required to protect Aboriginal cultural heritage from the impacts of a proposed activity on QPWS&P managed land. The duty of care at the minimum requires a risk assessment to be carried out. Any risk of harm to Aboriginal cultural heritage depends on various factors including the nature of the proposed activity and its level of surface disturbance, and the nature of any past uses and previous disturbance in the area.

The cultural heritage duty of care can be met in various ways, for example under a Cultural Heritage Management Plan, a native title agreement or other agreement with the relevant Aboriginal party, and by complying with gazetted cultural heritage duty of care guidelines. The gazetted cultural heritage duty of care guidelines are available from the

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) website. Records of some but not all significant sites are kept in the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register, which are each administered by DSDSATSIP. Search request forms are available from the DSDSATSIP website.

### **Reference materials**

- *Fossicking safety guidelines* (Resources publication).
- *Procedural guide: Fossicking on QPWS managed areas* further details the decision making and assessment process required to select, approve and maintain new GPAs for fossicking on QPWS&P managed areas.

### **Further Information**

Information on the current fossicking sites within QPWS&P managed areas, including information sheets and conditions can be found on DES web page: <<http://www.des.qld.gov.au/>>

Fossicking licences are issued by Resources, and list of fossicking areas within Queensland (excluding some private fossicking area) can be found on the web page <<https://www.resources.qld.gov.au/>>

**Human Rights Act 2019 compatibility**

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this operational policy, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

**Disclaimer**

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

**Approved By**

Ben Klaassen

Signature

23 June 2014

Date

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