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

Response to submissions on the DMP consultation paper:

Proposed Amendments to the Mining Legislation

October 2013

Introduction

On 27 August 2013 the Department of Mines and Petroleum (DMP) released a consultation paper titled *Proposed Amendments to the Mining Legislation*, for a month long public comment period.

The consultation paper outlined a number of proposed amendments to the *Mining Act 1978,* Mining Regulations 1981, *Mining Rehabilitation Fund Act 2012* and the Mining Rehabilitation Fund Regulations 2013; which are intended to facilitate greater transparency, streamline the approvals processes and strengthen compliance. It is intended that a final proposal for legislative amendments will be presented to the Government before the end of 2013.

The amendments outlined in the consultation paper relate to the following five key areas:

- recovery of expenditure from the Mining Rehabilitation Fund in some circumstances;
- issuing of infringement notices under the Mining Rehabilitation Fund Regulations;
- issuing a single Mining Rehabilitation Fund assessment notice, instead of individual notices where there is more than one tenement holder;
- streamlining the authorisation processes in the department; and
- improving public transparency.

The Department received comments from industry, government and non-government stakeholder representatives and considered all feedback in the progression of the five legislative amendments outlined in the consultation paper. This document is a summary of the comments received and DMP's responses to those comments.

General

While there were various specific comments provided through the responses, it is clear from the consultation process that there was general support from all stakeholders of the objectives to improve transparency, streamline the approvals process, and introduce appropriate compliance tools.

While providing in-principle support for the proposed legislative changes, a number of submissions outlined the desire for a greater understanding of how DMP would administer the various amended provisions. It was intended that DMP would continue to consult widely with its stakeholders to ensure that any new practices developed are administratively effective, and well-understood by the target audience. The development and/or refinement of administrative practices will occur through the existing DMP consultation processes as amendments are implemented.

Another matter which was raised by various stakeholders was the desire for DMP to continue to pursue amendment to legislation which will deliver on the objectives of the Reforming Environmental Regulation initiative (which includes greater transparency, streamlining of processes and improving the effectiveness of compliance services). The comments and suggestion raised through this consultation process that are beyond the specific proposals included in the consultation paper will therefore be considered by DMP in future legislative reform programs.

Stakeholder comments

The consultation paper set out that all comments and submissions received through the consultation process will be made publicly available. During the consultation period, submissions were received from the following organisations:

- The Conservation Council of Western Australia (CCWA)
- The Chamber of Minerals and Energy (CME)
- The Department of Water (DoW)
- Rio Tinto Iron Ore Ltd (Rio Tinto)
- The Association of Mining and Exploration Companies (AMEC)
- The Australian Mining Petroleum Law Association (AMPLA)
- The Department of Parks and Wildlife (DPaW)
- Cement Concrete & Aggregates Australia (CCAA)
- Holcim (Australia) Pty Ltd (HAUS)

For the purposes of more easily grouping and responding to points raised by stakeholders, the submissions have been split into each topic, however the content has been retained in its submitted form (i.e. the text of the submissions is included verbatim). DMP thanks all organisations for their considered input into the process.

DEPARTMENT'S RESPONSE TO COMMENTS RECEIVED ON CONSULTATION PAPER:
PROPOSED AMENDMENTS TO THE MINING LEGISLATION

Reference	Stakeholder	Comment	Department Response
		Section 3.1 Recovery of Mining Rehabilitation Fund expenditure	
1	**CME**	*CME supports the proposed amendments to the MRF Act to strengthen the State Government's compliance provisions to recover reasonable costs incurred by the MRF in undertaking rehabilitation work and minimise the potential for mine site operators avoiding rehabilitation obligations. CME agrees the MRF should be a source of last resort for funding rehabilitation of mine sites declared abandoned under the MRF Act, and where possible, part or all of the money responsible for carrying out the rehabilitation work should be recovered from the liable person (as defined in the DMP consultation paper).*	Support noted.
2	**Rio Tinto**	*The Company would like clarity regarding the relinquishment of tenure and future liabilities after relinquishment is granted by DMP.*	As a matter of policy, DMP does not relinquish tenure on which rehabilitation liability still remains. Relinquishment occurs only when the tenement holder's liability has been extinguished (other than in some rare circumstances where conversion occurs and rehabilitation obligations are transferred to the new tenement). The *Mining Act 1978* provides for ongoing obligations even if the tenement expires (at section 114B). DMP is revising the Bill to make it clear that the new debt recovery provisions of the *Mining Rehabilitation Fund Act 2012* will not apply where tenement holder has complied with its rehabilitation obligations and the tenement is subsequently relinquished.

Reference	Stakeholder	Comment	Department Response
3	**AMEC**	*From a practical perspective it would be an unacceptable risk to not be able to correctly and accurately identify a prosecution liability when contemplating the purchase of an entity/project, and to have suitable recourse when an unknown offence arises.* *While the concept of recouping lost funds is not objected to, consideration nee ds to be paid to the manner, method and timeframe of registering action.* *Ultimately, the Limitation Act 2005 sets a standard six (6) year term for registering offences. This takes into account factors such as the diminishing accuracy and completeness of records and witness accounts over time.*	The rehabilitation liability attaching to a tenement will be easily ascertainable by any prospective purchaser of the tenement. The person liable for either performing the rehabilitation or, in the event that the rehabilitation is paid for from the MRF, reimbursing the Fund, is the existing or most recent past tenement holder – not any previous tenement holder. The general limitation period under the *Limitation Act 2005* will apply to an action to recover money under proposed new section 9A of the Mining Rehabilitation Fund Act in the same way as it applies to any other cause of action. That is, court proceedings to recover money will have to be commenced within six years of the expenditure being made from the Fund.
4	**AMEC**	*Increasing the time limitation to commence action against a party has several shortcomings, not the least of which is the unintentional assumption of liabilities by a party through actions such as entity / project acquisition, and an inability to build a comprehensive defence case due to the lack of accuracy and fullness of records and witness accounts.* *AMEC also considers that recovery should be from the current tenement holder and not the party that sold the tenement and environmental liability.*	The capacity to recover money does not increase the time limit to commence action against a party. Section 114B of the *Mining Act 1978* has the effect that a person who is or was a mining tenement holder remains liable for obligations associated with the tenement (including rehabilitation obligations) no matter how long has elapsed since the obligation arose, and whether or not the tenement is still on foot. Proposed new section 9A of the MRF Act is consistent with the effect of section. It ensures that expenditure out of the Fund can be recovered if a person responsible for carrying out the rehabilitation can be identified. It will safeguard the integrity of the Fund by preventing operators from avoiding their responsibilities and relying on the contributions of other industry participants to cover their liabilities. Ultimately, protecting MRF funds will increase its viability, will tend to minimise levies, and is to the benefit of the industry generally. Recovery of any funds will be from the current or immediately past tenement holder, not any party who held and transferred the tenements legally prior to the rehabilitation liability accruing.

Reference	Stakeholder	Comment	Department Response
5	**AMPLA**	*It will be important to clearly articulate the meaning of 'person responsible'. There are two issues here:* – *Where an assessment notice has not been issued for a tenement. For example, where a tenement expires, is surrendered or is forfeited before any levy is assessed on the tenement – who is the person responsible? In this context, although understanding the identity of the person responsible will not be relevant for levy assessment, it will be relevant for identifying the person from whom moneys will be recovered.* – *Where an assessment notice has been issued for a tenement, but the holder changes after the last assessment notice. For example, where a tenement is sold after the last assessment notice, will the person responsible be: (a) the person named on the last assessment notice (that is, the seller); or (b) the person who held the tenement at the time of its expiration, surrender or forfeiture (that is, the purchaser)?*	The person responsible for carrying out rehabilitation is the existing or most recent tenement holder or holders. If this person is identifiable, and MRF money is spent on rehabilitating the relevant land, the expenditure will be able to be recovered from that person as a debt in court. The responsibility for rehabilitation exists because of tenement conditions and endures after the tenement expires because of Section 114B of the *Mining Act 1978.* The responsibility to rehabilitate land is separate from any liability to pay MRF levies on the tenement and applies whether or not an assessment notices for levy liability has been issued. On the second point, if a tenement changes hands, the responsibility for carrying out land rehabilitation transfers to the new tenement holder or holders.
6	**AMPLA**	*Section 7 of the MRF Act will presumably need to be amended to ensure that recovered money is credited to the Fund.*	This is correct and is appropriately addressed in the Bill giving effect to the proposed amendments to the *Mining Rehabilitation Fund Act 2012*.
7	**AMPLA**	*The Consultation Paper notes that such recoverable money will be a debt due to the Fund (rather than to the Crown in general). Is it intended that section 27 of the MRF Act also be amended to treat levy amounts and penalty amounts consistently – that is, debts due to the Fund rather than the State?*	There is no inconsistency. Section 27 of the *Mining Rehabilitation Fund Act 2012* allows recovery of unpaid levy amounts and any associated penalty to be recovered as a debt. Although the legislation expresses the debt as "due to the State", section 7(a) and (b) of the Act have the effect that levy and penalty amounts recovered under section 27 are credited to the Fund. Money recovered as a debt to the State under proposed new section 9A will also be credited to the Fund under section 7 as it is proposed to be amended by the Bill.

Reference	Stakeholder	Comment	Department Response
8	**AMPLA**	*Consideration needs to be given as to which entity is to recover monies due as a debt to the Fund. Presumably a fund cannot sue; the owner of the fund must sue.*	The Fund is not a legal entity and cannot sue. The proposed amendments provide that the CEO of DMP (as defined in the *Mining Rehabilitation Fund Act 2012*) will be able to take action to recover money as a debt.
9	**AMEC**	*It is considered that maintaining the actual MRF balance will contribute to reducing MRF levies imposed on stakeholders.* *On that basis, the concept of recouping monies spent from responsible parties is not objected to, subject to further review of intended parameters, not limited to the above considerations [see comments 3 & 4].* *It is therefore recommended that:* • *The proposal be restricted to recouping funds spent on disturbances which were subject to the reporting requirements of the MRF Act; and* • *Claims must be made within the standard six (6) year period provided for under the Limitation Act 2005.*	This support is noted. As stated above, the general limitation period under the *Limitation Act 2005* will apply to an action to recover money under proposed new section of the *Mining Rehabilitation Fund Act 2012* in the same way as it applies to any other cause of action. That is, court proceedings to recover money will have to be commenced within six years of the expenditure being made from the Fund. As indicated above, proposed new section 9A of the *Mining Rehabilitation Fund Act 2012* will not apply to a tenement holder that complies with its rehabilitation obligations and the tenement is subsequently relinquished.
		Section 3.2 Mining Rehabilitation Fund Infringement Notices	
10	**CME**	*CME supports in-principle this proposed amendment, however, guidance material on the circumstances where a penalty should be imposed upon failure to submit timely assessment information would be required. CME would not support infringement notices being issued for minor breaches of assessment information. Enforcement of penalties should be a tool of last resort after repeated failure to submit timely assessment information.* *Further, DMP should allow some flexibility if companies do not meet the reporting deadline in the initial years of the MRF if the company has endeavoured to meet the requirements but has experienced issues with the lodgement process.*	This support is noted. The issuing of infringement notices will be carried out in accordance with the department's published Enforcement and Prosecution Policy. This policy outlines the factors that are will be taken into account prior to enforcement of penalties. In addition, DMP will have internal procedures and controls to guide the issuing of infringement notices. This will include what matters are taken into account in issuing infringement notices, and the manner in which they are issued. The due date for submitting assessment information is on or before 30 June each year – this is provided for in the MRF regulations. DMP will be establishing business rules to determine how long after that date infringement notices will be sent. Tenement holders will have adequate opportunity to meet the data input obligation prior to the due date.

Reference	Stakeholder	Comment	Department Response
11	**Rio Tinto**	*The Company would like to better understand the guideline/ process around the issuing of the infringement notice. Some questions are:* • *Will the process be similar to that of the Water Services Act 2012, whereby reification notices are issued which allows the operator to rectify the issue prior to a final infringement notice being issued?* • *Who will be responsible for making the decision to issue the infringement notice – or will it be an automatic notice?* • *What is the appeals process once an infringement notice has been issued?*	An infringement notice is a way of dealing with an alleged offender without prosecuting. The relevant provisions of the *Criminal Procedure Act 2004* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994* will apply. On the first question, it is not proposed to allow for the issue of a rectification notice, as the obligation (for data entry by a certain date) is unambiguous and established in law. Given the nature of the offence in question, it is considered that tenement holders have adequate notice of the due date for data submission and sufficient opportunity to ensure their compliance during the reporting year. Regarding the second question, the decision to issue an infringement notice will reside with an officer or officers of DMP authorised to issue infringement notices. However DMP will have internal procedures and practices to govern the issuing of infringement notices. For the third question, in accordance with the *Criminal Procedure Act 2004*, an infringement notice will enable the person to whom it is issued to elect to have the matter dealt with in court. Therefore if a recipient of an infringement notice wishes to dispute the matter, they can elect to be prosecuted (in which case a Magistrate would decide on the matter). In addition, an infringement notice may be withdrawn if it has been issued in error.
12	**AMEC**	*Denying an operator's right to appeal to the Minister prior to the implementation of penalty is in contradiction to procedural fairness and natural justice.*	As outlined above, there is procedural fairness established through the infringement notice process given that the tenement is able to dispute the matter through electing to have the matter heard in court. This process is already established under the *Criminal Procedure Act 2004*.
13	**AMEC**	*The concept of an infringement notice is out of context of usual mining legislation and operations, in that it does not allow for appropriate discussion between the offending and enforcing party to correctly determine whether or not the penalty is appropriate to the circumstances.*	The proposal is for an infringement notice and reduced penalty amount ($4,000 compared to the maximum penalty of $20,000). DMP does not currently employ 'negotiated' penalties for breaches relating to environmental obligations, and therefore the use of infringement notices is considered appropriate.

Reference	Stakeholder	Comment	Department Response
14	**AMEC**	*AMEC considers that lodgement of a 'nil' disturbance report the day after it falls due does not justify a $4 000 infringement. Nor does it seem fair and just to impose mandatory penalty on an entity not able to comply for circumstances outside their control.*	As outlined above, the due date for submitting assessment information is on or before 30 June each year – this is provided for in the MRF regulations. DMP will be establishing business rules to determine how long after that date infringement notices will be sent. Tenement holders will have adequate opportunity to meet the data input obligation prior to the due date. As stated above, in accordance with the *Criminal Procedure Act 2004*, an infringement notice will enable the person to whom it is issued to elect to have the matter dealt with in court.
15	**AMEC**	*Current practice allows a period (generally 30 days) for the stakeholder to make a submission as to the circumstances surrounding the offence, such that the Minister, or other delegated authority, may consider the type and level of penalty appropriate to the circumstances, if any.*	This practice relates to environmental, and other, enforcement actions under the *Mining Act 1978*; where the ultimate penalty may be forfeiture of a tenement. Neither forfeiture of tenement, nor fines in lieu of forfeiture, are applicable penalties for failing to submit data on time for the *Mining Rehabilitation Fund Act 2012*. As stated above, in accordance with the *Criminal Procedure Act 2004*, an infringement notice will enable the person to whom it is issued to elect to have the matter dealt with in court.
16	**AMEC**	*In view of the above [see comments 12, 13, 14 &15], this proposal cannot be supported. Further clarification on how the MRF Act and the Fines, Penalties and Infringement Notices Enforcement Act 1994 interact would be useful.* *The Minister requires flexibility to exercise his powers justly and fairly. To remove the ability to align penalty offence is far from procedural fairness or natural justice and goes against the stated objective – being that of addressing offences at the 'lower end of the scale'.* *It is therefore recommended that the proposal to implement an infringement notice not be implemented in the current form.*	As outlined in response to above comments, the concerns raised here are addressed through existing provisions of law, and the development of the necessary internal procedures. Given this, DMP remains of the view that it is reasonable to recommend the government to progress this amendment. Mining Rehabilitation Fund Infringement Notices are required to protect the integrity of the MRF and allow efficient and appropriate enforcement tools. The relevant provisions of the *Criminal Procedure Act 2004* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994* will apply to an infringement notice issued under the *Mining Rehabilitation Fund Act 2012* in the same way they apply to infringement notices under other legislation.

Reference	Stakeholder	Comment	Department Response
17	**AMPLA**	*It will be important to clarify the related query above [see comment 5] as to the meaning of 'person responsible'. If, for instance, a tenement is sold and a levy amount that accrued prior to the sale remains unpaid after the sale, does the unpaid amount: (a) remain the responsibility of the seller; or (b) become the responsibility of the purchaser (that is, the new tenement holder)?*	Under section 12 of the *Mining Rehabilitation Fund Act 2012*, the person liable for paying a levy for a mining authorisation is the person who was the holder of the authorisation on the "prescribed day" for submitting assessment information. The prescribed day is 30 June in each year (see regulation 5(2) of the Mining Rehabilitation Fund Regulations 2013). The proposal to issue infringement notices applies only to the offence of failing to submit assessment information on time. Infringement notices are not proposed to be available for late payment or non-payment of MRF levy.
18	**AMPLA**	*The Consultation Paper states: 'It is intended that the "modified penalty" attached to the infringement notice will be $4 000".' It would seem that section 15(2) of the MRF Act will require amendment, to modify the penalty to $4 000 (rather than $20 000). The Consultation Paper does not clearly state that this is a proposed amendment.*	The proposal is to make available an alternative administrative enforcement mechanism which carries with it a lower, "modified" penalty. The term "modified penalty" was used in the Consultation Paper as it is the term used in the *Criminal Procedure Act 2004* to refer to the lower penalty amount for an offence that is payable under an infringement notice issued for the offence, as opposed to the full statutory maximum penalty that can be imposed if the offence is prosecuted in a court. The proposal is not to lower the existing statutory maximum penalty for the offence of failing to submit assessment information, and therefore the maximum penalty that can be imposed by a court for the offence will remain at $20,000.
19	**AMPLA**	*Also, it will be necessary to ensure that penalties recovered by way of modified penalty are to be paid to the Fund rather than the State.*	The credit of money paid through infringement notices has been considered by DMP in the preparation of the Consultation Paper. *The Sentencing Act 1995* s.60 provides that money arising from the payment of infringement notices and other fines is to be paid into the Consolidated Account – that is, it is applied to the benefit of the Crown rather than the specific government agency that issued the infringement notice or other fine. Exceptions to this general position are specified in Schedule 1 to the *Sentencing Act 1995*, and do not include MRF penalty notices.

Reference	Stakeholder	Comment	Department Response
		Section 3.3 Mining Rehabilitation Fund Assessment Notices	
20	**CME**	*CME supports an amendment to the MRF Act so that, where there is more than one registered tenement holder for a Mining Act tenement, a single notice can be issued to a liable person, or to all tenement holders, at a contact address nominated at the same time as assessment information is submitted.*	The support is noted.
21	**AMEC**	*Where multiple holders exist, the acceptance a single disturbance report is of benefit to the parties, subject to the ability for an alternate holder to report, however the issue of a single notice results in liable parties being denied the information necessary to ensure compliance and meet their fiduciary duties.* *Implementing the policy of one (1) holder reporting disturbance data on behalf of all holders is beneficial to stakeholders, both DMP and holders alike, although there should be measures in place to allow an alternate holder to report where the primary party, for any reason, is not able to do so.*	The proposal included in the Consultation Paper was to allow the department to send notifications to joint tenement holders, informing them that an invoice has been to sent to the nominated address. It did not relate to whether one of many (joint) tenement holders can submit a single disturbance report. This suggestion will be considered by DMP to ascertain whether it is able to be implemented.
22	**AMEC**	*There is a noticeable risk where only one (1) holder is to receive notices required for compliance, in that other parties may not be aware of the incurrence, and extent, of their joint and several liability.* *It is noted that some other communication from DMP, whether in hardcopy or electronic format, should make allowances for copies to be issued to alternate parties.* *Although managing and reducing administrative costs is commendable, it should not be undertaken in a manner that increases risk to the stakeholder/s.* *For this reason, while a primary holder is required to report, alternate holders must also be provided the ability to lodge in their place.* *Further, although a notice may be issued to the primary holder, the other parties must receive a copy in order to be able to manage their risks and meet their fiduciary duties.*	The proposed amendment aims to avoid the significant cost burden on industry of multiple tenement holders receiving the same invoice and making incorrect payments. For those tenement holders this can cause considerable delay and issues with compliance. The proposal would allow DMP to send out a single notice of assessment to the person nominated by the tenement holders to receive the notice. With the advent of the electronic systems for MRF data receipt and communications, it will be possible for a single invoice to be sent out to the nominated party, as well as 'notification' letters to be sent to all tenement holders advising them that an assessment notice has been sent. The nature of a notification would be developed through consultation with the industry prior to implementation.

Reference	Stakeholder	Comment	Department Response
23	**AMEC**	*It is therefore recommended that:* • *One (1) disturbance report per tenement be accepted as compliance with the MRF legislation;* • *Implemented policy should allow other parties access for lodgement; and* • *The non-reporting tenement holders continue to receive copies of all notices issued pursuant to MRF legislation.*	DMP will consider these as procedural matters and consult directly with industry prior to implementing any changes.
24	**AMPLA**	*No comments, other than noting the need for clarification of the meaning of 'person responsible' – see comments in Section 3.2 above [see comments 5].*	As stated above, the person responsible for carrying out rehabilitation is the existing or most recent tenement holder or holders.
		Section 3.4 Streamlining authorisation processes	
25	**CME**	*CME supports an amendment to the Mining Act to allow for the Director General to delegate the powers to approve a Programme of Work, Mining Proposal and Mine Closure Plans to an appropriate officer within the agency.*	The support is noted.
26	**Rio Tinto**	*The Company is generally supportive of this proposed amendment and is likely to enhance timeliness of approvals.* *How will the department ensure consistency in decisions if more people are delegated authority to approve Programme of Works, Mining Proposals and Closure Plans? If a consistent process is not followed, it could potentially result in varied decisions from additional authorised persona and subsequently lead to uncertainty for industry in relation to approval process and timeframes.* *The Company would appreciate more clarity on the appeals process and our ability to request a review of decisions.*	Delivering a predictable and consistent process is a high priority for DMP in its regulatory approvals processes. To assist this, DMP has an externally accredited Quality Management System for the assessment of applications under the *Mining Act 1978*. This QMS ensures a consistency of process. There is the standard practice that any applicant can seek to have a decision (or recommendation) reviewed through the management hierarchy of the department. Already DMP provides the names, email address and direct telephone numbers of all supervisors and managers within the Environment Division on its website. If any applicant has a query about any application, they can elevate it to the appropriate senior officer for review/consideration. In practice, the proposed amendments are not expected to change the decision makers in the department; only the method of authorisation will change.

Reference	Stakeholder	Comment	Department Response
27	**AMEC**	*AMEC supports the intention of the proposal to streamline the authorisation processes by way of increased delegation to skilled and experienced staff.* *To assist in this process it is essential that clear escalation protocols support this process.* *In addition, and in order to avoid any degree of bias or subjective assessment, it will be essential that consistent criterion and transparent decision making processes are implemented.* *AMEC supports the use of 'delegated authority' to Department staff provided that clear escalation protocols exist, and that consistent criterion and transparent decision making processes are implemented and adhered to at all times.*	Over time DMP has developed specific escalation protocols for different approval types. The department is now working on consolidating these into a general escalation protocol to be used following implementation of the proposed amendment. This would provide clarity around authorisation processes. As stated above; the proposed amendments are not expected to change the decision makers in the department; only the method of authorisation will change. Consistent regulatory practice and transparent decision making processes continue to be a departmental priority.
		Section 3.5 Improving Transparency	
28	**CME**	*CME supports in-principle amendments to improve transparency. However, it is important DMP finds a balance between access to relevant information and protection of commercially sensitive material.* *Environmental reporting requirements, particularly Annual Environmental Reviews (AERs), are likely to contain information about exploration areas which is commercially sensitive.*	The support is noted. The commitment to protect commercially sensitive information is well-established within DMP. In 2011 DMP published the "Strategy Paper: Transparency in Environmental Regulatory Decision Making" which remains the policy guidance for DMP (this policy is available on DMP's website). The Strategy Paper sets out that in making any changes to transparency arrangements, DMP will consider a set of 10 separate criteria, and one of these criteria is the protection of commercially sensitive material. The specific changes to practices will be implemented by way of regulations, following further specific consultation with all stakeholders.

Reference	Stakeholder	Comment	Department Response
29	**CME**	*Non-compliance reporting against tenement conditions can often have legitimate reasoning behind the breach of condition and the immediate public reporting may result in wrong assumptions being arrived at.* *Full public access to all approval information and compliance reports has the potential for unwieldy and inefficient processes. If approval and compliance information is not presented in clear and simple formats which allow for the public's interpretation it may create further administrative delays.*	Transparency of decision-making and environmental performance is important in building public confidence in the environmental regulatory system and the industry more broadly. This is particularly the case where decisions and environmental performance related to public assets. It is agreed that information release should occur in a manner which is clear and simple.
30	**CME**	*The public release of any information submitted under the Mining Act and MRF Act will need to be carefully guided by DMP policy. CME recommends Industry is adequately consulted on the agency guidelines on what constitutes commercially sensitive material.*	The proposal for the legislative amendments will be to expand the existing power within the *Mining Act 1978* to create regulations authorising and regulating the release of specific environmental information, reports and data. All stakeholders will be consulted at the time that the regulations are being prepared. The *Mining Rehabilitation Fund Act 2012* will also be directly amended to allow the release of certain information.
31	**CCWA**	*The proposed transparency amendment continues to deny citizens the 3rd party rights they have to refer proposals to the EPA under Section 38 of the Environmental Protection Act.*	The proposed amendments do not diminish third party rights to refer proposals to the Environmental Protection Authority – rather, by ensuring DMP can make information available as widely as possible, the amendments will increase transparency and facilitate the exercise of third-party referral rights. All DMP approved projects can be referred to the Environmental Protection Authority under Section 38 of the *Environmental Protection Act 1986*, providing the proposals have not yet been implemented.
32	**DPaW**	*With respect to the sharing of environmental data, it is requested that DPaW is consulted directly in relation to protocols for the release of information on the locations of threatened flora and fauna populations and occurrences of threatened ecological communities.*	This coordination is recognised as important and DMP will liaise with Department of Parks and Wildlife directly concerning the release of information.

Reference	Stakeholder	Comment	Department Response
33	**CCAA**	*The release of company documents for public scrutiny by the Director General requires further consideration. The company involved may have intellectual property rights and should be consulted before any information is released, especially if the release may be prejudicial to its commercial interests.* *Whilst it is accepted that EPA and other environmental applications are publically available, the case of the DMP applications there may exist some more sensitive production statistical data which impact on market intelligence and competitive advantage. Large scale mining operations targeting international markets may not share the same sensitivity as localised BRM [Basic Raw Materials] operations which occur in the same region as the company's competitors.*	As stated above, DMP recognises the complexities surrounding the release of commercially sensitive information. Practices relating to the release of information will be guided by DMP's published Transparency Strategy, which acknowledges the need to protect intellectual property rights and commercial interests of companies. The specific changes to practices will be implemented by way of regulations, following further specific consultation with all stakeholders.
34	**AMEC**	*Work approval documents should be made immediately available to the current tenement holder, regardless of the retrospective nature of the proposed policy and the timeframe indicated therein for public release.* *As a tenement holder is responsible for disturbance, it is important that the holder be able to identify those disturbances for which they are responsible through examination of work approval documents.* *It is acknowledged that provisions exists under Freedom of Information with respect to data recovery, however the time and expense incurred by both the holder, the reporting party and DMP in recovering the data is considerable, and not in the best interests of timely reporting by the holder.* *The proposition needs, therefore, to be amended in order to address a holder's requirements.*	DMP agrees, and is working on the development of online systems which allow tenement holders immediate access to documents they have submitted to the department. This work is occurring independently of the proposed legislative amendments.
35	**AMEC**	*AMEC would welcome the opportunity to comment on any proposed DMP policy concerning the release of commercially sensitive plans/information/data prior to implementation.*	DMP will continue to consult with stakeholders in the refinement of policies, and the implementation of practices, relating to transparency.

Reference	Stakeholder	Comment	Department Response
36	**AMEC**	*Given that environmental management and rehabilitation is the responsibility of the holder, it seems illogical that pertinent data would be withheld for any reason.* *This proposal should be adjusted to accommodate a holder's right to obtain information on their current holdings without being subject to delay, or screening of relevant information.* *It is therefore recommended that:* • *Irrespective of the timing of lodgement and release of data to open file, that the current holder be able to immediately access environmental data on that tenement;* • *The proposal be implemented inclusive of the above provision; and* • *AMEC be provided the opportunity to comment on DMP policy on release of information and data.*	The proposed amendments will allow the first two recommendations to be implemented. On the third recommendation, DMP published the "Strategy Paper: Transparency in Environmental Regulatory Decision Making" in 2011 following public and industry consultation, and does not propose to revise the policy at this time. DMP will however consult with stakeholders on future regulations proposed under the *Mining Act 1978.*
37	**Rio Tinto**	*The Company would like clarity on the guideline/process around the type of information that would be made public and how it would be made public. Will all the report information be made public or would there be a chance for operators to keep some commercially sensitive information confidential?* *Will the Director General's delegate his/her powers to determine the information that is made public?* *The Company would like to ensure that DMP implements a clear process by which the DG determines information that can be made public and that industry has input into determining the type of information that can be made public.*	As stated above, DMP recognises the complexities surrounding the release of commercially sensitive information. Practices relating to the release of information will be guided by DMP's published Transparency Strategy, which acknowledges the need to protect intellectual property rights and commercial interests of companies. The proposed amendments to the *Mining Act 1978* will extend the existing power to make regulations to authorise and regulate the publication of information. Accordingly, before the amendments have any practical effect, regulations will be required to specify the classes of information that are authorised to be made public. DMP will consult with stakeholders on future regulations proposed under the *Mining Act 1978*.

Reference	Stakeholder	Comment	Department Response
		Other comments	
38	**CME**	*CME supports the intention of these amendments and considers they will assist in facilitating greater transparency, more efficient approvals and effective compliance arrangements. The amendments included within the Consultation Paper are reflective of outcomes developed through the Reforming Environmental Regulations reform process.*	Support noted.
39	**DoW**	*The Department of Water supports the five proposed amendments to the Mining Legislation in their current form.*	Support noted.
40	**CCWA**	*The proposed amendments do not take the process of regulatory reform very far being largely about legal instruments for the MRF.*	The proposals cover both amendments to the *Mining Act 1978* (and Mining Regulations 1981) as well as the *Mining Rehabilitation Fund Act 2012*.
41	**CCWA**	*The hazard of giving back bonds in exchange for signing up for the MRF has been starkly illustrated by the collapse of GMK Exploration operator of the failed Meekatharra Goldmine. This company opted in, got release from $3million in bonds, and then sunk the company. A good deal for them, MRF has raised $ 2.2m from the industry and incurred a $3m legacy! Legislation to send such people to jail or incur a high personal cost is needed urgently with lots of medium sized operators likely to shut down in the near future.*	The tenement holder referenced in this point entered voluntary administration, and the site continues to operate under these administrative arrangements. Decisions regarding the application of bonds are outside the scope of the proposed amendments. It is not an offence under the *Mining Act 1978* for a mining tenement holder to enter administration. Tenement holders can continue to operate in accordance with the *Mining Act 1978* (including approvals granted under the *Mining Act 1978*) whilst under administration. Even if a tenement holder decides to close a mine site, every effort is made to on-sell the operations, in which case the rehabilitation obligations of that site are transferred to the new owners. Penalties would only be relevant where a tenement holder did not meet their environmental and/or rehabilitation obligations. DMP will continue to review the adequacy of penalty provisions under the *Mining Act 1978* to ensure that penalties levels and tools are appropriate.

Reference	Stakeholder	Comment	Department Response
42	**CCWA**	*From our perspective the legislation required is:* 1. *A mines environmental Act subject to audit by the EPA and including a legal delegation.* 2. *The ability to comprehensively regulate to protect the environment, not just ground disturbance.* 3. *Movement away from secondary approval through Conditions to Environmental Regulations with penalties other than tenement forfeiture.* 4. *The ability to protect the environment outside tenement boundaries.*	These suggestions are outside of the current scope of reforms presented in the Consultation Paper. However these additional suggestions for legislative reform will be considered and researched by DMP prior to the next phase of legislative reforms. Further consultation with stakeholders will occur following this research, including with DMP's Reforming Environmental Regulation Advisory Panel.
43	**CCAA**	*Noting the differences between the high value mineral extraction and low value Basic Raw Material (BRM) extraction, CCAA member contend that the following elements need to be factored into the RER regulation process:* 1. *Create a BRM extraction low risk stream within the Mining Act.* 2. *The new Mining Act amendments must reflect the BRM extraction low risk classification.* 3. *Regulation needs to reflect the fact that quarries are relatively small operations.* 4. *BRMs are essential for infrastructure and the development of local industry and the community.* 5. *Current procedures surrounding concrete production on mining leases introduces the potential for duplication management and control issues.* 6. *Regulation needs to be implemented consistently. Officers need to be appropriately trained to ensure this occurs.*	These suggestions are outside of the current scope of legislative proposals presented in the Consultation Paper. However they will be considered and researched by DMP prior to the next phase of legislative reforms. Further consultation with stakeholders will occur following this research, including with DMP's Reforming Environmental Regulation Advisory Panel. In addition, the regulation of Basic Raw Material extraction will be considered in the development of the risk-based regulatory framework and any supporting legislative reforms which DMP is currently implementing through its Reforming Environmental Regulation initiative. Relating to point 6, DMP has established quality management systems, training and peer-review processes to improve the consistency of assessment processes. Assessment and compliance officers are assigned responsibility for a specific geographical area, and this ensures that they have a good understanding of the types of mineral extraction operations within their area of responsibility. DMP's Environmental Officers undergo a six-month training program under supervision of experienced Senior Environmental Officers, before being authorised to conduct environmental assessments.

Reference	Stakeholder	Comment	Department Response
44	**HAUS**	*HAUS regularly experiences and over estimation [sic] of impacts by DMP during assessment processes. HAUS undertakes extraction of Basic Raw Materials (BRM), being a low cost commodity, approval duplication and assessment processes can significantly affect the access to affordable resources.* *HAUS' experience is that there is an inconsistency within the DMP in the level of assessment of a quarry (for a Mining Proposal, Mine Closure Plan and annual reporting requirements). Quarry extraction is often assessed by the DMP to the same level of detail as a large scale mine when the possible impacts and significance of the two operations are considerably different.* *HAUS proposes that the risk based assessment approach should appropriately classify 'Mining Operations' as there are differing scales of activity that is subject of compliance with Mining Act 1978.* *Past DMP procedures and implementation of the Mining Act 1978 allowed for a 'low risk' category, LIMO (Low Impact Mining Operations) were operations which used smaller reporting templates to obtain low risk approvals used by BRM operators (for Annual Environmental Reporting and Mining Proposal). With the online system and reforms to date, LIMO functions have been removed within the last two years and BRM has been grouped into an all-encompassing classification of 'Mining Operations' by the DMP. It's important to note that there was this functionality in the past, but it has been removed.* *Consequently, the most effective amendments would be to create a low risk stream within the Mining Act. As the Mining Act is set up primarily for tenement allocation, one effective way of undertaking this amendment would be creating a classification within the Mining Act for Basic Raw Materials. At the moment the Mining Act prescribes for Exploration Licences (E), Mining Leases (M), General Purpose Leases (G), Miscellaneous Licences (L) etc. It would be ideal to create a classification for BRM with perhaps an exception for a Super Quarry (e.g. Throughput of more than 5 mil tpa is classified as a 'mine'). The Tenement Conditions, Mining Proposals, and Mine Closure Plan assessment processes by the DMP could then reflect the BRM low risk classification within the DMP.*	These comments do not relate specifically to any of the five proposed legislative amendments outlined in the consultation paper. As outlined above, the regulation of Basic Raw Materials extraction will be considered in the development of the risk-based regulatory framework through the RER process.

Reference	Stakeholder	Comment	Department Response
45	**HAUS**	*HAUS makes the following comments on duplication that exists at the current point in time between DMP and the Department of Environment and Regulation (DER). HAUS proposes that these duplications should be considered by the DMP in the Mining Act amendments. The areas of specific duplication are:* • *Discharges and emissions (incl. water, dust etc) are being assessed by DMP Environmental Branch in the Mining Proposal approval process when they are assessed by DER in obtaining environmental protection licences under the Environmental Protection Regulations 1987, and* • *Assessments for flora and fauna by DMP Environmental Branch in the Mining Proposal approval process when they are addresses by DMP Native Vegetation Branch in obtaining clearing of native vegetation approvals under the Environmental Protection Act 1986 & Environmental Protection (Clearing or Native Vegetation) Regulations 2004.*	While these suggestions are outside the scope of the proposed amendments, DMP and DER have been researching the opportunities to reduce duplication of regulatory effort. Specifically, the area of potential duplication is a key theme within DMP's Reforming Environmental Regulation program. A Duplication and Overlap Workshop was held on 18 September 2013 as a part of this process, at which industry stakeholders were present. This workshop identified these potential areas, and the outcomes of the workshop are currently the subject of further research. Stakeholders are encouraged to submit case studies or specific examples of duplication to DMP to be considered in this process.
46	**HAUS**	*HAUS has notices that there is legislative duplication occurring between the 2011 Building Act and the regulations for building licences and the Mines Safety Inspection Act 1994.*	In regards to the *Mines Safety and Inspection Act 2011* and the *Building Act 2011*: these issues are unrelated to the environmental legislation changes currently being proposed to mining legislation and outside the scope of the environmental duplication and overlap workshop (referred to in the Department's response at comment 45). However, the department will separately investigate this duplication through its Resource Safety Division.
47	**AMEC**	*As suggested during the initial RER process, AMEC recommends that native vegetation clearing assessments (for the resources sector) be full incorporated into the Mining Act and Petroleum Act approvals processes.* *This would reduce duplication; improve the effectiveness and efficiency of DMP's environmental regulatory role.* *The Mining Act should be included on Schedule 6 of the Environment Protection Act as a matter of priority.*	While this suggestion is outside the scope of the proposed amendments, DMP and DER will investigate this suggestion and undertake separate consultation on the opportunities for addressing this duplication.

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