



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



# Response to Submissions Cost Reflective Pricing Options – Environmental Regulation of the Mining Act 1978 – Discussion Paper

December 2014

## Introduction

On 22 September 2014 DMP released a discussion paper on *Cost Reflective Pricing Options for Environmental Regulation of the Mining Act 1978*. Five submissions were received from across industry (prospecting, basic raw materials, exploration and mining). DMP recognises that industry is generally opposed in principle to the introduction of fees for environmental regulation under the *Mining Act 1978*.

The key concern raised on the fee modelling was the equity and cross subsidisation between applications, in particular small operators subsidising larger operations. This will be considered in any further development of modelling fees.

Submissions raised the issue of government's accountability for expenditure. There are existing obligations and oversights imposed upon government agencies to deliver services efficiently regardless of the funding source, including financial auditing, annual reviews of fees and charges and the regulatory impact statement processes. In addition, as part of the Reforming Environmental Regulation program (RER), DMP has committed to developing regulatory performance measures and publicly reporting on regulatory activity and expenditures.

This is the first step in consultation. The feedback will be considered and Government will make separate announcement on next steps.

Submission	Issue	Response
<b>1. General comments on introducing fees</b>		
<b>1.1 Business Case</b>		
<b>AMEC<sup>1</sup></b>	<p>Inadequate explanation has been provided on how the apparent funding shortfall has been derived or how it will ultimately lead to better environmental outcomes.</p> <p>Apart from looking to meet the shortfall no explanation has been provided on why a new fee should be introduced for PoWs or Mining Proposals, apart from it being a revenue raising exercise.</p>	<p>Since 2012, DMP has been engaging with industry and non-industry stakeholders on establishing the future roles and functions of DMP in environmental regulation. This has been through the Reforming Environmental Regulation (RER) initiative, which included the establishment of an independently chaired Ministerial Advisory Panel, and later a RER Advisory Panel made upon of representatives of government and non-government organisations.</p> <p>This process has allowed all stakeholders to contribute to the confirmation of the essential regulatory services for DMP in the area of environmental regulation, and also contribute to legislative, procedural and system changes to ensure that these essential regulatory services are undertaken in the most efficient and effective way.</p> <p>This process has included the development of regulatory objectives, and industry supported recommendations for ongoing implementation of the RER initiative.</p>
<b>CME<sup>2</sup></b>	CME recommends DMP develop a robust business case canvassing objectives, goals, options cost/benefits, resourcing, budgets, governance, monitoring and reporting arrangements, in consultation with industry, to inform discussion on the need for a cost-recovery proposal.	
<b>Sandfire Resources</b>	There is no clear verification or justification in the Discussion Paper that would indicated the options presented are acceptable.	
<b>Les Lowe</b>	We feel that the DMP has not properly presented its reasons and justifications for presenting this new cost impost.	

<sup>1</sup>Association of Mining and Exploration Companies of Australia

<sup>2</sup>Chamber of Minerals and Energy of Western Australia

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<b>1.2 Government Accountability</b>		
<b>AMEC</b>	There are no indications how assessment timeframes will be improved in any way, or how the introduction of such fees will result in better compliance and environmental outcomes.	<p>There are existing obligations and oversights imposed upon government agencies to deliver services efficiently regardless of the funding source, including financial auditing, annual reviews of fees and charges and the regulatory impact statement processes.</p> <p>In addition, as part of the RER program, DMP is working with industry and non-industry stakeholders to ensure that regulatory and environmental performance measures will be in place, and that DMP will publicly report on regulatory activity and expenditures.</p>
<b>CME</b>	The business case must include appropriate governance arrangements, involving industry, to ensure DMP is accountable for the costs they are seeking to recover. This maintains an emphasis on the efficiency of the cost-recovery arrangements.	
<b>CME</b>	The model implemented may create incentives which can result in unnecessarily high cost recovery charges due to factors such as gold plating unnecessarily high standards, cost padding, or regulatory creep.	
<b>Les Lowe</b>	<p>We feel that the DMP has not presented any performance indicators of how we, the users, will judge the performance of providing the service as stated.</p> <p>We feel that there is a probability of “gold plating” this fee whereby services are provided at a level that is not required. This also raises the issue of increasing cost recovery rates by inflating cost levels knowing that the “user has to pay”.</p>	
<b>1.3 Industry savings from RER implementation</b>		
<b>AMEC</b>	The document is full of unsubstantiated guesses on estimated cost savings to industry, which appear are inadequate attempt to support a request for additional DMP financial resources. In AMEC’s view the justification for additional resources has not been made. It would appear that the perceived cost savings to industry is based on a DMP report on the ‘Cost of Doing Business, January 2014.	The modelling presented in the Discussion Paper was developed specifically for environmental reforms and was not based on any other report.
<b>Sandfire Resources</b>	Acknowledge the progress in improving the application of the Mining Act 1978 by the DMP since 2012.	Noted.
<b>Steve Milner</b>	Welcome new initiatives to reduce timeframes for approvals.	Noted.
<b>Steve Milner</b>	The proposed RER program may deliver costs savings but only to the top end of the industry. It dramatically increases costs for the lower end of the industry including construction material and basic raw material producers.	The intention of the risk-based regulatory system being introduced is that regulatory costs are proportional to the size and risks of the activity. Activities that can demonstrate they are low environmental risks should experience expedited and streamlined regulatory requirements.

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<b>1.4 Existing industry costs</b>		
<b>AMEC</b>	Industry is facing extremely tight margins and scarce cash flow to such an extent that may further increase in business input costs could have disastrous unintended consequences, including job losses.	DMP is aware of the existing costs for industry and current operating environment and will consider this in any implementation of further fees. Across the department DMP is identifying and implementing ways to minimise costs of regulatory compliance for industry.
<b>CME</b>	The resources sector is already a significant contributor to the WA government's revenue base through mining royalties, contributing \$6.98 billion in 2013-14. The introduction of additional fees and charges in the form of cost-recovery risk compounding the current increasing cost of doing business.	
<b>Sandfire Resources</b>	Industry is already funding application of the <i>Mining Act 1978</i> through payment of royalties and annual licence fees.	
<b>Les Lowe</b>	Service fees are already in place for other documentation and when the tenement rent is added to that, we feel that the cost burden is becoming so great that many small operators will be costed out of the business.	
<b>Steve Milner</b>	Costs associated with MPs, MCPs, fauna and flora surveys and aboriginal issues are resulting in hardships for this sector and adding further large costs for environmental compliance is obscene.	
<b>1.5 Efficiency savings for DMP</b>		
<b>AMEC</b>	<p>There is insufficient detail on direct efficiency and productivity savings achievable by the Department from the implementation of the RER initiatives, which should result in identified and quantifiable efficiency and productivity savings within the Department and not a need for additional resources.</p> <p>AMEC considers the departmental savings modelled are a significant underestimate and that there are considerable efficiency and productivity savings achievable within the Department as a result of current reform processes.</p>	<p>DMP has undertaken extensive workload modelling to predict the departmental savings from the efficiencies gained from the RER assessment system.</p> <p>As described in the Discussion Paper, these savings will be wholly reallocated to compliance assurance activities.</p>
<b>Sandfire Resources</b>	Whilst the DMP have estimated savings of some \$32M to industry through the RER process, there is no indication as to what the estimated cost savings to the DMP are, given the justification for additional costs are framed on estimated industry savings and not on costs associated with DMP activities.	

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<b>1.6 Alternative Funding Sources</b>		
<b>AMEC</b>	It is not clear why the identified funding shortfall should be met by industry on an ongoing basis rather than a normal Consolidated Fund appropriation.	DMP notes the industry view that government appropriations should continue to cover the entirety of environmental regulation under the <i>Mining Act 1978</i> .  It is however observed that fees for environmental permits and licences are common practice for industry regulation at the State and Federal levels across Australia.
<b>CME</b>	CME considers consolidated revenue, in to which existing mining royalty payments are made, presents the most appropriate source of revenue to ensure independent environmental assessments are undertaken. While CME is supportive of the RER program to establish a risk and outcome-based regulatory framework, the model should be funded from existing government appropriations.  Community support for regulatory agencies and their subsequent decisions may be diminished if cost-recovery is introduced. Environment regulation is an important function of government and cost-recovery models have the potential to create the perception industry is purchasing environmental approval from the regulator.	
<b>Sandfire Resources</b>	It is the responsibility of Government to fund internal activities of the DMP. This would be an abdication of State Government responsibility to provide adequate funding for effective governance of the <i>Mining Act 1978</i> .	
<b>Les Lowe</b>	The activity should have been a one off cost to the WA Government at the start of the exercise with ongoing funding coming from Consolidated Revenue, no different to any other government department.	
<b>1.7 Funding of the reform program</b>		
<b>CME</b>	CME does not support the introduction of cost-recovery for the implementation of the RER program. Revenue to implement and administer the reform program on an ongoing basis should continue to be funded from existing appropriations.	The proposal for partial cost reflective as outlined in the Discussion Paper sought to relate to those costs relating to assessment and undertaking compliance assessment of applications. It was not the case that the fees would simply be for the administration of reform programs.
<b>1.8 Referral to Regulatory Gatekeeping Unit</b>		
<b>AMEC</b>	In industry's review a full Regulation Impact Statement should have been prepared in close consultation with industry. Such a document should have also included identified departmental efficiency and productivity savings, and adopted a full cost benefit analysis approach.	Any introduction of fees will be subject to a Regulatory Impact Statement assessment.
<b>CME</b>	CME recommends the referral of the full package of RER amendments to the government's Regulatory Gatekeeping Unit for a Regulatory Impact Assessment.	The RER amendments have been submitted and assessed by the Regulatory Gatekeeping Unit as compliant.

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<b>2. Response to proposed model</b>		
<b>2.1 General Comments</b>		
<b>AMEC</b>	The methodology adopted to calculate the proposed fee structure for PoWs and Mining Proposals appears to be very simplistic of what funds are required divided by the number of applications/proposals. This approach is not reflective of actual costs and is unacceptable to industry.	DMP undertook extensive workload modelling to identify the actual costs of assessment and compliance activities. The numbers presented as indicative fees represent the recovery of a shortfall, not full cost recovery.
<b>Sandfire Resources</b>	There is no clear indication from the modelling what the actual costs to industry are likely to be, using the last three years of baseline data.	
<b>Sandfire Resources</b>	There are no apparent benefits to industry through the application of additional fees.	As outlined in the Discussion Paper, DMP has estimated that the introduction of the reforms will saving industry operators in the vicinity of \$30m annually.
<b>Steve Milner</b>	Extra costs in the construction/raw material part of our industry are not welcome. Sand and gravel miners often require approval of large areas to allow for freedom of choice to mine different types of produce and a fee per hectare could result in the collapse of some companies.	This is noted, however the reforms are anticipated to deliver considerable cost savings to industry as well.
<b>2.2 Equity of cost distribution</b>		
<b>CME</b>	CME consider both compliance fee models will result in cross-subsidisation between mining companies.	Noted. Any further development of a fee model will consider equity and endeavour to minimise cross subsidisation.
<b>Steve Milner</b>	The proposed fee system for MP and MCPs for construction material and basic raw material producers is heavy handed for a sector of the industry that often “lives and dies’ on small short term contracts where the margin is often approximately \$1 per tonne. This sector of the industry requires a different fee structure to that of that part of the industry that mines 24/7 and sells product on the world markets.	
<b>Les Lowe</b>	The “minimum fee” model contains “unintended consequences” that will mean the small low-cost operator will be paying a far greater rate of fees, pro-rata, than the larger corporate miners. Despite a figure of “500 dollars” being quoted in the DMP proposal, this means the often simple POW for small tenement holders will recoup far more than it costs to process the POW application. In this manner, the smaller operator will be cross subsidising the larger mining companies.	

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<b>2.3 Compliance levy</b>		
<b>CME</b>	While the charging of an application fee commensurate to costs of the goods and services provided is a legitimate form of cost-recovery, the charging of cost-recovery to fund DMP's compliance functions does present a number of questions. CME consider both compliance fee models potentially constitute a levy or tax and therefore not suitable as a cost recovery model.	Noted.
<b>Les Lowe</b>	The proposed annual compliance fee can also have a similar unintended consequence wherein the operator is still working on the basis of his original POW application for up to four years, during which he has made no further use of the DMP's facilities, staff or systems and yet he is to be charged an ongoing fee. That is totally unacceptable as we will be literally "paying for no service".	Agreed in part – activities will continue to be subject to Part IV requirements of the EP Act. However for DMP's environmental regulation it is important to align the environmental outcomes identified by the EPA

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