

Consultation Paper – Proposed Amendments to the Mining Legislation

Comments by AMPLA Western Australian Branch Committee (Subcommittee on Proposed Amendments to the Mining Legislation)

Item	Proposed amendment	Summary of proposed amendment	Comments
1	Recovery of Mining Rehabilitation Fund expenditure	To amend the MRF Act to provide that where money has been paid from the Fund to rehabilitate an abandoned mine site, or affected land relating to an abandoned mine site, part or all of the money can be recovered from the person responsible for carrying out the work.	<ul style="list-style-type: none"> • It will be important to clearly articulate the meaning of 'person responsible'. There are two issues here: <ul style="list-style-type: none"> – <i>Where an assessment notice has not been issued for a tenement.</i> 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. – <i>Where an assessment notice has been issued for a tenement, but the holder changes after the last assessment notice.</i> 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)?

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			<ul style="list-style-type: none"> • Section 7 of the MRF Act will presumably need to be amended to ensure that recovered money is credited to the Fund. • 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? • 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.
2	Mining Rehabilitation Fund Infringement Notices	To amend the Mining Rehabilitation Fund Regulations to provide for the capacity to issue infringement notices for the offence of failing to submit assessment information on or before the due date under the MRF Act.	<ul style="list-style-type: none"> • It will be important to clarify the related query above 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)? • 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

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			<p>this is a proposed amendment.</p> <ul style="list-style-type: none"> 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.
3	Mining Rehabilitation Fund Assessment Notices	To amend the MRF Act so that, where there is more than one registered tenement holder, a single notice can be issued for that tenement.	No comments, other than noting the need for clarification of the meaning of 'person responsible' – see Items 1 and 2 above.
4	Streamlining authorisation processes	To directly vest the approval functions to the Director General for Mining Proposals, Mine Closure Plans and Programmes of Work, and for the Director General to be able to delegate these powers appropriately within the department.	No comments.
5	Improving transparency	<p>To amend the Mining Act to provide for an approved Programme of Work, Mining Proposal, Mine Closure Plan, or any information submitted to comply with environmental reporting requirements, can be made publicly available as determined by the Director General.</p> <p>To amend the Mining Rehabilitation Fund Act to allow data and information reported by tenement holders to be made publicly available by the Director General.</p>	No comments.