



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



Cost Reflective Pricing Options

– Environmental Regulation of the *Mining Act 1978*

Discussion Paper

September 2014

Preface

In recent years, the Department of Mines and Petroleum has committed to various reforms to ensure that the work of the department is meeting the future needs of the community and industry – ensuring community expectations of environmental performance are met and delivering industry a robust social licence to operate. One of these reforms has been the Reforming Environmental Regulation (RER) initiative, which is supported by stakeholders, and is embedding the principles of best practice environmental regulation into DMP's policies, processes and services.

At the commencement of the RER initiative in February 2012, DMP identified that the required funding to deliver the department's future environmental regulatory services would exceed existing levels of government appropriation. This would necessitate DMP to both pursue efficiencies in its regulation and identify potential funding options; and would include consideration of the introduction of industry-based fees. The government agreed to cover the additional funds required in the short term, to defer the introduction of industry-based fees until progress of the RER initiative had occurred. Given the significant progress with the implementation of the RER initiative, it is now timely for DMP to proceed with consideration of the funding options.

It is recognised that the expansion of cost reflective pricing for environmental regulation of the *Mining Act 1978* will have a direct cost impact on mining companies and explorers, however the financial impacts are offset by reductions in red-tape being implemented as part of the RER initiative; it is estimated that these will save the mining industry approximately \$32m annually.

This consultation paper has been prepared to explain the modelling of funding requirements, proposed cost reflective pricing approach, the potential implications, and to seek input from key stakeholders.

The proposed funding model is open for public comment until Monday 20 October 2014. Feedback will help to ensure that the proposed approach is appropriate and workable. It is intended that a final proposal regarding cost reflective pricing will be presented to the Government before the end of 2014.

I encourage you to read this consultation paper and to submit your comments on the proposed cost reflective pricing arrangements.

Phil Gorey

EXECUTIVE DIRECTOR ENVIRONMENT

Submissions

The Department of Mines and Petroleum (DMP) invites submissions on the proposed introduction of partial cost reflective pricing for environmental regulation under the *Mining Act 1978*.

All submissions will be considered by DMP before the final recommendations are presented to the State Government. All submissions made to DMP will be publicly available.

Remember to include:

- your name;
- address; and
- date.

Points to keep in mind:

- clearly state your point of view;
- indicate the source of your information if applicable; and
- suggest alternative recommendations where necessary.

Electronic submissions are welcome to:

- reform@dmp.wa.gov.au

Submissions must be received by 5.00pm on Monday 20 October 2014.

If you have any queries, please contact either Dr Marnie Leybourne, General Manager Administration and Reform, on (08) 9222 3763, or Dr Phil Gorey, Executive Director Environment on (08) 9222 3290.

Copies of the current *Mining Act 1978* and the associated regulations are available on the State Law Publisher's website at www.slp.wa.gov.au

1. Introduction

The Department of Mines and Petroleum (DMP) is Western Australia's lead agency in attracting private investment in resource exploration and development. This is achieved through the provision of geoscientific information on mineral and energy resources and management of equitable and secure titles systems for the mining, petroleum and geothermal industries.

DMP also carries prime responsibility for regulating these extractive industries as well as dangerous goods in Western Australia. DMP collects resource royalties on behalf of the State Government and ensures that the highest level of safety, health and environmental standards are achieved in accordance with State and Commonwealth legislation, regulation and policies.

DMP's key roles in this regard are to:

- undertake environmental impact assessments, place conditions on tenements and titles and undertake compliance monitoring under the *Mining Act 1978* (Mining Act); *Petroleum and Geothermal Energy Resources Act 1967*; *Petroleum (Submerged Lands) Act 1982*; and the *Petroleum Pipelines Act 1969*;
- investigate and enforce compliance, closure and rehabilitation with approvals;
- provide information on its regulatory services and provide advice to other government agencies.

The department has dedicated resources to identify and analyse options and work with stakeholders to identify any procedures, systems and legislative changes that may be required to regulate in an efficient and effective manner. Part of this strategy is to ensure that activities undertaken by the department are appropriately funded and resourced to ensure that efficient and effective regulation occurs.

This discussion paper outlines options of models for the introduction of partial cost reflective pricing to enable the implementation of best practice environmental regulation of the mining industry.

2. Environmental regulatory reform in Western Australia

Over the past five years, the Western Australian Government has implemented substantial reforms to State approval processes. These reforms have led to improvements on the approvals process across the business activities, and have been well supported by stakeholders.

2.1 DMP's Reforming Environmental Regulatory (RER) program

Consistent with the State Government's reform strategy, in May 2012 DMP announced the implementation of its Reforming Environmental Regulation (RER) program to fully integrate the principles of best practice environmental regulation into its regulatory functions.

The RER program will establish a risk and outcome-based regulatory framework to ensure that DMP's regulatory effort is targeted so that it protects environmental values, and is efficient and timely. This framework will be administered in accordance with the principles of best practice government administration – accountability, transparency, predictability, proportionality and targeted.

The scope and nature of the RER initiative have been endorsed by an independently chaired Ministerial Advisory Panel which was established in 2012 to provide advice to the Minister for Mines and Petroleum on the priority reforms for DMP's environmental regulatory functions. In December 2012, the Ministerial Advisory Panel provided its recommendations

for implementation of the RER initiative to the Minister for Mines and Petroleum; which were subsequently adopted by the Government¹.

During the development of the RER initiative, DMP undertook consultation on funding with stakeholders, including meetings and a formal workshop in February 2012. To meet the ongoing funding requirement, DMP identified that it would be necessary to prepare options for the funding of the future regulatory service; and that this would necessitate consideration of meeting these costs through government appropriation, and/or through the introduction of industry-based fees.

At that time the view of industry stakeholders was that the consideration of funding requirements should be deferred until there was sufficient progress on implementing the RER initiative. Given the first stage of legislative amendments have now been passed, and the second stage currently in drafting, it is now timely to ensure the department has the available resources to effectively deliver the improved regulatory regime being implemented through the legislative amendments.

2.2 Funding implications for implementation of RER

In early 2012, DMP modelled expected funding requirements for the delivery of environmental regulatory services following implementation of the RER initiative.

DMP reviewed industry trends of exploration activity, project development and closure. The mineral and petroleum industry continues to expand in Western Australia, resulting in a direct increase in the workload demand for the department's environmental regulation function. The expansion has been slightly affected in recent years; however the overall trend is increasing activity. The Environment Division staff maintained time sheets recording hours spent against a range of activities, including management, training and administration. This data was analysed in order to accurately determine the required resourcing levels for environmental services.

In 2012, the expected funding requirement was estimated at \$21m per year. Subsequent to the recommendations of the Ministerial Advisory Panel, and efficiencies adopted within DMP, the annual funding required for all of the environmental regulatory functions of DMP is now estimated to be \$19.1m.

The total of \$19.1m covers all of the Environment Division's activities:

- regulation of the mining and petroleum industries
- advisory services to industry and other agencies
- mining securities administration and rehabilitation, and
- governance.

2.3 Reforms to regulation under the *Mining Act 1978*

Implementation of the RER program is a major reform of the existing structure of regulation under the *Mining Act 1978*. The RER program and the amendments to the *Mining Act 1978* proposed by DMP in January 2014² will create a streamlined and more efficient interface between the industry and the department delivering significant cost savings to industry and government. For DMP, this will enable a reallocation of resources to focus on audits, inspections and compliance assurance.

1 <http://www.dmp.wa.gov.au/15857.aspx>

2 http://www.dmp.wa.gov.au/documents/Environmental_Reform_Discussion_Paper.pdf

The transition to the risk-based, outcomes focused regulatory model enabled by the RER program will introduce significant efficiencies for the current workload at the applications and assessment stage for both industry and DMP. These cost savings for DMP at the assessment stage will be reallocated to partially cover the costs of delivering increased activity for audits, inspections and compliance assurance.

DMP's revised analysis of the funding required to deliver the modernised regulatory system, enabled by the legislative reforms and RER program, has identified a funding shortfall related to administration of the *Mining Act 1978* of \$4.8m annually. Without the efficiencies introduced by the reform program the annual regulatory cost would be significantly higher.

2.4 Cost-savings to industry arising from DMP environmental reforms

Since the commencement of the RER program, DMP has implemented changes in policy, procedures and practices as they arise – to ensure that benefits of the reforms are realised as soon as possible. This approach has meant that there have already been improvements to the transparency and predictability in decision making, as well as a reduction in red tape and duplication. These include such changes as extending the validity period of programmes of work from one to four years.

To assist in measuring the success of the RER initiative, DMP has undertaken a process to estimate the specific cost savings to industry arising from these reforms. DMP uses a variety of modelling tools, including the Australian Government's Office of Best Practice Regulation's Business Cost Calculator, as well as using data verified by industry representatives and environmental consultants.

The recent reforms by DMP are estimated to have already delivered savings of approximately \$2.2m in direct costs annually, and the remaining RER reforms which will arise from proposed further amendments to the *Mining Act 1978* are estimated to save a further \$29.8 million a year to industry, totalling \$32m. The breakdown of these projected savings is listed in Table 1.

DMP will continue to explore options to further reduce costs to industry, in particular, ways in which assessments and approvals can be completed more quickly, and further streamlining of application and annual reporting requirements. For instance, DMP has highlighted a further \$1.6m in direct savings are expected to be delivered through streamlining online systems, reviewing existing prescriptive guidance and electronic links with other regulatory agencies.

2.5 Existing cost reflective pricing for environmental regulation in DMP

Currently it is estimated that less than 10 per cent of the costs of environmental regulation in DMP are funded from existing industry based fees and levies. This revenue consists of application fees for native vegetation clearing proposals (\$300) that DMP assesses under delegation through the *Environmental Protection Act 1986*.

The Mining Rehabilitation Fund administration is fully funded via the interest generated on the principal fund amount.

In 2012, the *Mining Act 1978* was amended to include the provisions requiring the payment of a prescribed assessment fee in respect of a programme of work application³ and a mining proposal⁴. There are currently no fees prescribed under the Mining Regulations 1981 for these provisions, and during the preparation of these amendments the Mining Industry Liaison Committee and DMP agreed to consult with industry prior to prescribing fees.

2.6 Accountability for regulatory performance

A key commitment in the RER program is the development and regular reporting of regulatory performance measures. DMP recognises the importance of being transparent and accountable for its regulatory activities, particularly where these activities are subject to cost reflective pricing. In its regular reporting on performance, DMP will demonstrate the efficiency and effectiveness of its regulation of the mining industry. For the agency, the regulatory performance measures are also a useful tool to identify areas of further reform and drive continuous improvement.

Table 1 – Annual savings to the mining industry arising from RER initiative

Activity	Direct savings to industry (\$m per year)
Reforms already implemented	
Reduce duplication between Mining Proposals and Project Management Plans processes for approval of tailings storage facilities	\$0.1
Extend validity period for programmes of work	\$0.2
Integration of Annual Environmental Reports and MRF data reporting	\$1.8
Provide clarity to operators on high risk MRF sites	\$0.1
	= \$2.2
Implemented through legislative package	
Further streamline approvals for exploration activities	\$0.8
Implement risk based framework into mining proposal submissions	\$7.4
Reduce duplication arising from native vegetation clearing permits and approvals under the Mining Act	\$5.9
Reform mine closure plan applications	\$2.9
Reduced complexity of industry's compliance obligation registers and reporting requirements	\$12.1
Streamline annual reporting requirements	\$0.7
	= \$29.8
TOTAL	= \$32.0

3 Sections 16, 19, 22 and 24 of the *Mining Amendment Act 2012*

4 Section 25 of the *Mining Amendment Act 2012*

2.7 Environmental Fees in Queensland

For the purposes of comparison, DMP has considered fee arrangements in Queensland, the second largest resource jurisdiction behind Western Australia. Fees in Queensland for “environmentally relevant activities” are based on the type of mineral being mined. The fees are set annually and range from mining bauxite (\$22,164.50) to mining copper ore (\$49,584.50). Exploration activities such as “mining activity involving drilling, costeaning, pitting or carrying out geological surveys” has an annual fee of \$1,828.

3 Fee structure options

DMP has modelled a range of possible fee structures for environmental regulation, such as unit fees and fees based on areas of disturbance (hectares).

The fee structures have been separated between exploration and mining proposals/mine closure plans, as it is likely they will be treated differently.

The factors considered in deciding on the models presented in this paper include administrative simplicity, fees proportionate to the costs incurred in regulation, and minimising upfront charges to operators.

The following options were modelled:

1. Application fee and a separate annual compliance fee on a per unit (application) basis;
2. Application fee and a separate annual compliance fee based on area of disturbance (hectares);
 - a. Without a minimum fee
 - b. With a minimum fee

The models used disturbance data from exploration applications (programmes of work) and mining proposals that had been submitted during the previous three years to determine averages. It assumed 1100 PoWs (covering 10,457 hectares of disturbance) and 290 mining proposals (21,527 hectares of disturbance) being submitted annually.

Due to a number of proposed changes, including extending the validity periods of PoWs from one year to four years, the department has made forecasts using assumptions based on the best available information at this point in time. All fees are therefore indicative and dependent on the variability of the assumptions imbedded in the model.

3.1 Mining Proposals/Mine Closure Plans

At present, mine closure plans are developed and submitted separately to mining proposals. However, DMP is currently developing a new submission system consistent with the proposed move towards a risk-based and outcomes-focussed approach that will integrate the mine closure plan with the mining proposal. Therefore, the costs of administering both have been combined so that there is only one fee covering both. In Option 1 and 2 both the application and annual compliance fee would be payable in the first year, and the annual compliance fee in all subsequent years.

3.1.1 Option 1 – unit based application fee and annual compliance fees

This option would charge a set application fee for each mining proposal, followed by an annual compliance fee. The rates would not differ on the basis of size or complexity of the proposal.

3.1.2 Option 2 – area-based application fee and annual compliance fees

a. Without a minimum fee

This option would have fees dependent on the proposed area of disturbance in the mining proposal.

b. With a minimum fee

This option would have fees dependent on the proposed area of disturbance in the mining proposal. This option calculates a minimum fee for all applicants including those with 0 hectares disturbed.

Using an area-based application fee, and using the past three years of applications to base averages, around two-thirds of mining proposals would have fees of less than \$5000 with or without a minimum fee.

3.2 Programmes of Work (exploration approvals)

While programmes of work (PoWs) are now valid for four years, in many cases the proposed activities and subsequent rehabilitation will be undertaken relatively quickly. The expected areas of disturbance per application are also not large – given an expected average of 1100 PoWs/year and the average area of disturbance for all PoWs over the past three years has been 10,457 ha/year, an approved PoW on average covered 10ha.

Given these numbers, it is proposed that, rather than have a separate application fee and annual compliance fee, the two fees be combined into a single upfront payment of a combined application and compliance fee. This would be easier to administer and would not require the collection of annual compliance fees, most of which would be quite small.

Option 1 – unit based application and compliance fee

A combined unit-based fee (covering both application and compliance) would be paid up front. The rates would not differ on the basis of size or complexity of the proposal.

Option 2 – area based application and compliance fee

a. Without a minimum fee

A combined area based fee (covering both application and compliance) would be paid upfront based on the area of proposed disturbance.

b. With a minimum fee

A combined area based fee (covering both application and compliance) would be paid upfront based on the area of proposed disturbance. This option calculates a minimum fee for all applicants.

Using an area-based fee, and using the past three years of applications to base averages, around 90 per cent of PoWs would have application fees of less than \$500 with or without a minimum fee.

4 Factors to consider in evaluating options

It is the intent that the distribution of costs imposed on each proponent is equitable to limit cross subsidisation between projects of differing complexity.

For PoWs, a unit-based application fee may be considered inequitable for those proponents intending only a small area of disturbance. However, a pure area-based application fee would mean that the smallest areas of disturbance would likely cost more to administer than what would be collected.

A minimum fee, with an additional scale to reflect area or complexity, is likely to offer the greatest equity for proponents.

For mining proposals, an area-based system may be the most equitable. Using disturbance categories such as those used for the Mining Rehabilitation Fund to provide some equity with regard to sites with a higher risk, however it would be more difficult to administer.

5 Next steps

DMP is seeking feedback from stakeholders on the proposed fee structures; which options would be considered more equitable and easy to administer from industry's perspective.

Suggestions of other options not highlighted here would also be welcomed.

It is proposed to introduce fees in 2015.

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