



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

Strategy Paper:
Transparency in Environmental Regulatory Decision Making

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Introduction

The Department of Mines and Petroleum (DMP) is the state's lead agency for the mining, petroleum and geothermal projects in Western Australia, and is responsible for the regulation of the resources sector.

A key regulatory function of the department is to ensure that environmental impacts associated with resource projects are minimised, that resource industry environmental practices meet the expectations of the State Government and the community.

This strategy paper guides how DMP will continuously improve transparency arrangements within environmental regulation functions. The intent of this strategy is to define the factors DMP will take into account before proposing future changes.

Changing community attitudes, government policies and legislation, place pressure on the industry and DMP to improve its performance. As environmental regulator, DMP continues to refine its processes to deliver predictable, reliable and timely regulatory decisions.

In early 2010, DMP identified the need for a strategic approach to improve performance reporting and public availability of information on regulatory decisions; with a focus on environmental approvals.

On 24 August 2010 DMP released a draft of this paper for a three month comment period and received comments from industry and community representatives. Where appropriate this paper reflects the comments and recommendations received.

DMP has delivered improved transparency through recent approvals reforms, which includes initiatives such as online lodgements, tracking and performance reporting. Results from these reforms have improved performance outcomes for industry and government. DMP is continuing to review interagency and Commonwealth protocols and agreements, to ensure efficient, effective and consistent decision-making.

The scope of this strategy

This strategy will guide continuous improvement to transparency arrangements for regulatory decisions relating to environmental approvals administered by the department. For the purposes of this strategy, "regulatory decision-making" is specific to environmental regulation decisions made in exercising authority established under legislation covering mining, petroleum and geothermal activities.

Guiding principle for transparency

DMP will pursue the level of transparency that can cost-effectively achieve the objectives of improving the: (a) quality of decision-making (b) capacity for individuals or organisations to be informed about applications and decisions of interest.

The transparency practices to be adopted for each specific decision, and in what circumstances, will be based upon the criteria described in this strategy paper.

Transparency in decision making

There are different actions that the department could consider to improve the transparency of environmental regulatory decisions. The department proposes to consider the following options to be made publicly available.

1. Criteria and process used by the regulator in decision-making.
2. Details of applications and non-confidential supporting documents.
3. Conditions placed on approvals issued.
4. Summary information relating to decisions.
5. Annual reports on the environmental performance by operators and/or tenement holder.

The department will assess each category/activity and determine appropriate options based on the criteria below.

Criteria for transparency actions

In determining which transparency actions to adopt for each of the environmental decision making processes, DMP will consider the ten broad criteria outlined below.

1. Environmental significance

DMP makes numerous regulatory decisions on a daily basis that relate to mining, petroleum and geothermal legislation. Many of these decisions are about matters that have a low environmental impact (e.g. low impact prospecting operations).

DMP will prioritise transparency around decisions with the potential for significant environmental impact.

2. Improving decision quality

One of the principles being pursued is to improve the quality of regulatory decisions.

For administrative decisions, increased transparency is unlikely to lead to improved quality of decision making. However in more complex matters, increased transparency may result in a more comprehensive statement on the material considered in reaching the decision.

From time-to-time decisions may be audited by an expert panel, to ensure quality advice and consistency. The nature and extent of information made publicly available will depend upon the circumstances. DMP will prioritise transparency where there is a potential to improve regulatory decisions.

3. Public interest

DMP recognises its role to inform and improve the level of understanding of the resources industry in the wider community. A level of public interest may not relate specifically to elevated environmental risks, but may reflect areas of decision making that attract strong, divergent community opinion.

Where there is public interest in an area or project of environmental approvals, DMP may consider steps to inform the public of its decisions.

4. Potential for wider benefits

Some DMP decisions have the potential to deliver benefits beyond the parties directly affected by the decision. Regulatory decisions that demonstrate the expected government standards need to be readily available and possibly promoted.

As an example a DMP decision to reject an application (and the reasons why), would inform other applicants of the circumstances when applications may be rejected. Other examples include enforcement action that may act as a general deterrent.

Where there is a clear benefit that may be achieved through greater awareness, the department will preference disclosure of these decisions.

5. Cost of a transparency measure

If not carefully implemented the adoption of new transparency measures may result in direct and indirect costs to the department and industry, DMP will not adopt new measures if it does not provide an improved cost/benefit.

DMP will seek to release information regarding applications for mineral, petroleum and geothermal activities, only where those processes can be automated through online systems. The introduction of new measures must not result in delays in the processing of applications.

DMP will also consider opportunities for industry participants to deliver transparency before entering a formal DMP process (e.g. evidence of stakeholder consultation and outcomes).

DMP will undertake a cost-benefit analysis to quantify the expected costs of any new measures, before a decision is proposed for change.

6. Existing transparency arrangements

DMP will carefully consider existing arrangements and not duplicate an existing system. This is particularly the case where mining, petroleum and geothermal activities require approvals under legislation administered by other agencies.

As examples, there are measures that are required for public consultation for activities requiring approval under the Environmental Protection Act 1986 (e.g. Part IV and Part V approvals).

7. Commercial and/or confidentiality issues

DMP will not disclose any information that is commercially sensitive or confidential, and will ensure that information release occurs in accordance with statutory obligations. Operators within the mining, petroleum and geothermal industries often provide information to DMP that is commercially sensitive. One example is the provision of financial information about the cost of mine rehabilitation.

DMP is acutely aware of the potential for information received to be confidential or of a commercially sensitive nature. This includes information which may not immediately appear to be commercially sensitive. DMP will consider ways to address the aspects of commercial and/or confidential information through measures including;

- Separate provision of confidential and commercially sensitive information in submissions from other environmental information (e.g. disturbance areas for exploration are reported and not the detail of exploration activities).

- Delaying the release of information, and/or notification of decisions, for a period of time so that the likelihood of the information remaining commercially sensitive after this period is reduced. It is noted that some information will no longer be relevant after a period of time.
- Ensuring that companies only provide information that is required for DMP to administer its statutory obligations.

8. Statutory obligations

DMP administered legislation establishes statutory obligations and limitations on the release of some types of information, therefore proposed changes must comply with statutory obligations.

Where the existing legislation is inconsistent with the objectives of transparency, DMP will recommend to government that legislative changes are considered. DMP will continue to process applications made under the provisions of the *Freedom of Information Act 1992*.

9. Prejudicial material

There are circumstances where material received or issued by DMP will be sensitive and if made publicly available, could undermine the integrity of the regulatory process. An example of this is when an application or documents is part of ongoing investigations.

Any new proposed arrangements will ensure that public availability of information does not undermine the integrity of administration or enforcement of legislation.

10. Legislative responsibility and harmonisation

DMP undertakes administrative and regulatory activities that are governed by legislation that is the responsibility of other portfolios. An example would be the approval of Native Vegetation Clearing Permits under the *Environmental Protection Act 1986*, undertaken by DMP through delegation from the Department of Environment and Conservation.

If DMP considers any changes in delegated activities, they will make these recommendations to the appropriate Minister. It is acknowledge that implementing the same legislation for aspects such as harmonisation with other agencies, will be a further factor that the responsible Minister will need to consider.

Specific transparency actions

DMP proposes to continuously review its regulatory functions and introduce appropriate transparency measures in accordance to the criteria detailed in this strategy paper. Proposed changes to transparency practices for DMP environmental regulation will include consultation with the resources sector and stakeholders. This will ensure that proposed actions will effectively deliver the desired outcomes.

However, as a general guide, DMP will consider the following transparency measures, in the coming years, as the processes continue to be reformed. In all cases the costs and benefits of the proposed changes will be quantified, which will form part of pre-implementation stakeholder consultation.

Guidelines, standards and process information

DMP will maintain as a priority, the publication of material that details the environmental standards and decision making processes.

Applications lodged (ground disturbance activities)

DMP processes applications for ground disturbance activities separately to the granting of the tenure applications. This includes programmes of work for mineral exploration, mining proposals for mining development, environmental management plans and environmental plans for petroleum and geothermal exploration and production of onshore and offshore projects in Western Australia. DMP also processes applications for native vegetation clearing in relation to mineral and petroleum activities.

As the nature of environmental regulatory decisions for works vary substantially, DMP does not propose to implement the same transparency and reporting practices across all approval processes in all circumstances.

For the regulatory processes relating to applications for works, DMP will generally make publicly available guidance material detailing the decision-making criteria, along with undertaking regular performance reporting of quantity and timeliness of decisions.

Where the nature of the specific regulatory decisions warrant, when considered against the criteria, DMP will pursue the following measures:

- Publishing details of decisions, such as a decision report
- Publishing details of applications received and approved.

Reports by title holders

DMP requires operators and tenure holders to provide reports such as annual performance reports and monitoring reports. DMP is progressing towards making publicly available reports that are required by DMP as a result of statutory obligations or requirements of condition of authorisation.

The processes, timing and nature of reports released by DMP will be determined through consultation with industry, taking into account the criteria detailed in this strategy.

Annual reports from tenement holders published by DMP would not include commercially sensitive or confidential material.

Enforcement

One of the principles within the DMP Enforcement and Prosecutions Policy is the extent to which an enforcement action will act as a general deterrent to the regulated community. As a result, DMP will preference that a specific enforcement action taken will be made available publicly. Initially, DMP will report enforcement actions which involve prosecution or the imposition of fines.

General correspondence

At this stage, DMP will not make publicly available general correspondence between it and industry operators.

Documents already held by the department

Where DMP intends to implement changes to transparency arrangements, changes will only apply after consultation with industry and stakeholders. In addition to ensuring that statutory obligations are followed, transparency will not be applied to retrospective documentation.



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