



Government of **Western Australia**  
**Ministerial Advisory Panel**  
*"Advising on Reforming Environmental Regulation"*

# Reforming Environmental Regulation in the WA Resources Industry



Prepared for the Minister for Mines and Petroleum  
December 2012

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## Executive Summary

The rapid growth and development of the resources sector in Western Australia has put pressure on government to adequately resource the regulation of environmental approvals and compliance. There is significant impetus to improve the effectiveness and efficiency of environmental regulation through the targeted and proportional use of government resources under a risk-based framework.

The Ministerial Advisory Panel (MAP) recommends that the Department of Mines and Petroleum (DMP) implement a number of reforms to clarify its role and responsibility for environmental regulation within the whole of government context, and inform the development of clearly articulated environmental outcomes and objectives.

Establishing this strategic framework will ensure DMP's regulatory function is clear, timely and focused. It will also ensure it does not duplicate the environmental obligations of other agencies. The recommended reforms include:

- Implement a risk-based framework to ensure DMP's regulatory activity is targeted and proportional to risk to achieve its environmental outcomes.
- Establish legal obligations for environmental management under mining<sup>1</sup> legislation to provide clear enforceable obligations which align with environmental outcomes.
- Implement contemporary compliance and enforcement tools and administration to promote compliance with environmental obligations.
- Establish systems for monitoring and reporting performance to ensure DMP is:
  - achieving its environmental outcomes;
  - targeting resources to achieve outcomes and provide continuous improvement; and
  - providing transparency.

MAP also recommends DMP develops and implements strategies to achieve an accountable governance framework through improved transparency and communication.

MAP's recommendations are listed in Table 1. The rationale and expected outcomes for each recommendation are summarised in Table 3.

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<sup>1</sup> Environmental obligations for petroleum legislation have recently been reviewed and enshrined in the *Petroleum (Submerged Lands)(Environment) Regulations 2012*; *Petroleum and Geothermal Energy Resources (Environment) Regulations 2012*; and *Petroleum Pipelines (Environment) Regulations 2012*

DMP will need to ensure that implementation of these reforms considers implications for the regulation of State Agreement Acts, as well as both the mining and petroleum legislation for which it is responsible.

The successful transition to the recommended strategic framework will be reliant on the adoption and implementation of processes at an administrative and operational level by DMP and the industry it regulates.

The key elements for risk-based, leading practice environmental regulation are identified in Figure 1. There may be tensions between these elements - for example, measures to increase accountability may require additional time. However, it is important for a risk-based, leading practice framework to consider all of these elements, to meet the expectations of industry, government and the community.

MAP recommends an ongoing and formalised stakeholder consultation structure to provide continuing input and direction to the implementation of reforms.

**Figure 1: Key Elements of Risk-based, Leading Practice Environmental Regulation**

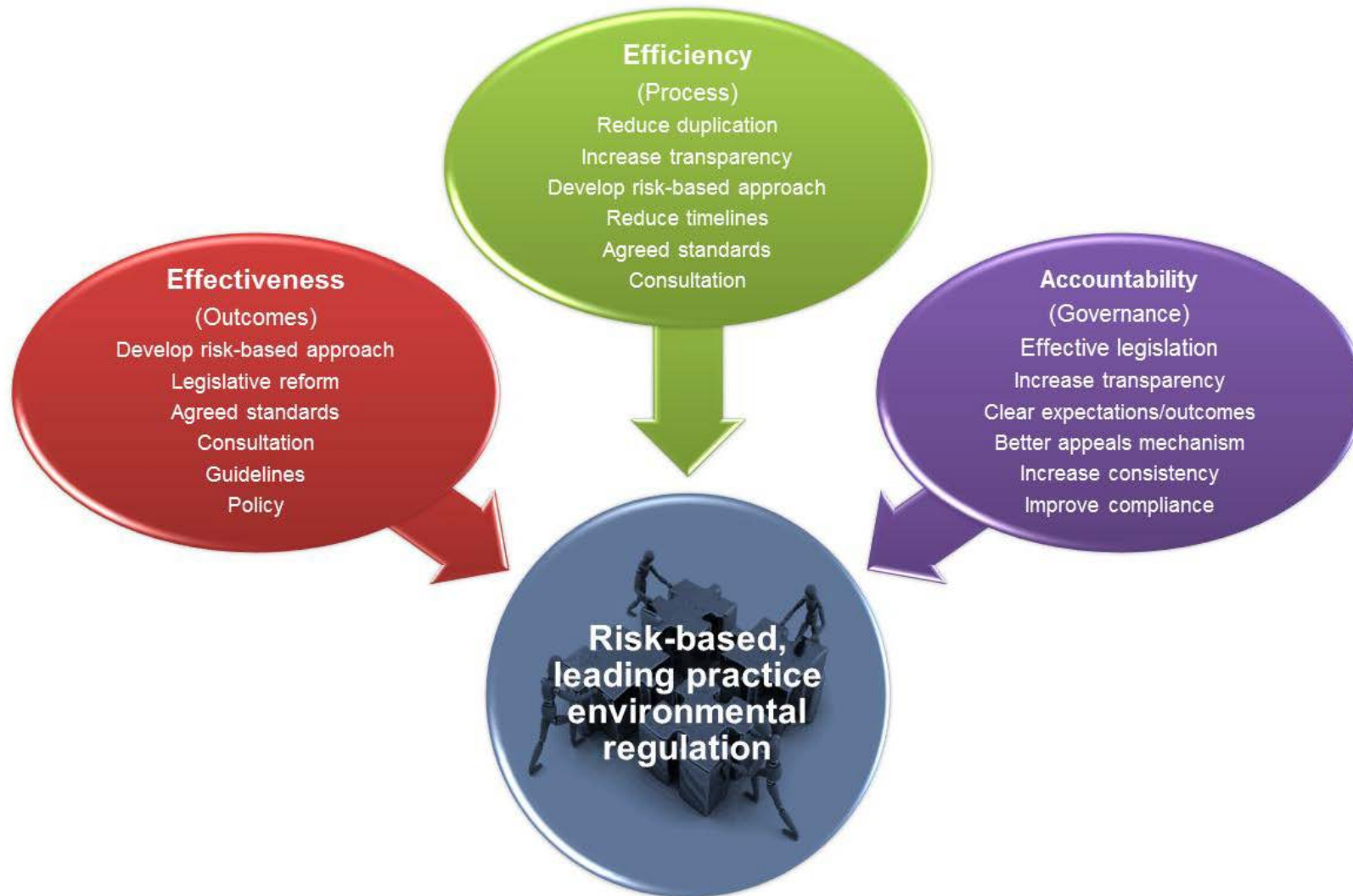


Table 1: Summary of Recommendations

Clear Environmental Objectives	
Recommendation 1:	Establish clear and appropriate environmental objectives
Recommendation 2:	Develop meaningful outcomes-based performance indicators
Recommendation 3:	Establish clear and enforceable environmental obligations for mining activities
Recommendation 4:	Implement a robust and transparent relinquishment and abandonment process
Efficient Environmental Regulation	
Recommendation 5:	Implement a full risk-based assessment and compliance methodology for environmental regulation
Recommendation 6:	Revise timelines and efficiency performance indicators, in line with risk-based regulation
Recommendation 7:	DMP will work with other agencies to improve efficiency and eliminate duplication
Recommendation 8:	Improvements in cross-agency policies, such as the Lead Agency Framework, will be addressed in appropriate inter-governmental forums
Improved Transparency and Communication	
Recommendation 9:	Implement a formal Transparency Strategy for DMP
Recommendation 10:	Implement improved stakeholder consultation and communication
Effective Compliance Framework	
Recommendation 11:	Establish an appropriate legislative framework for the environmental regulation of mining
Recommendation 12:	Examine the feasibility of implementing an external review mechanism for enforcement decisions of environmental compliance matters (other than EP Act process)
Recommendation 13:	Identify and articulate DMP's administrative framework for activities to promote compliance in a whole of government context.
Recommendation 14:	Establish clear operational procedures to improve the efficiency, effectiveness and accountability of compliance activities

# 1 Introduction: The Consultation Process

## 1.1 Scope of the reforms

DMP and others have undertaken numerous reform projects to improve environmental regulation. However, there has been consistent feedback from industry, environmental non-government organisations and government itself regarding the effectiveness, efficiency and accountability of environmental regulation. The Minister for Mines and Petroleum has now sought to implement a consultative process to identify specific issues that can drive the reforms within DMP.

The 'Reforming Environmental Regulation' (RER) program commenced in June 2012 in order to formally coordinate the input of numerous stakeholders, and ensure all relevant issues were raised and considered as part of determining the future direction and implementation of its reforms.

The reform program was developed cognisant of the broader context including the establishment of the Mining Rehabilitation Fund (MRF) and emerging industries such as unconventional gas and uranium mining.

## 1.2 Reform consultation process

The Minister established a Ministerial Advisory Panel (MAP) to provide advice to him, with the Hon. Cheryl Edwardes as the independent Chair.

MAP established the following four Working Groups to undertake detailed consultation and provide advice on tools and strategies for the reforms:

- Compliance Working Group
- Governance Working Group
- Approvals Working Group
- Petroleum Environment Working Group.

At the request of the Compliance Working Group, a representative from the Department of Indigenous Affairs attended Compliance Working Group meetings.

Terms of Reference, minutes and supporting papers from all Working Group meetings were published on the DMP website.<sup>2</sup> This report provides the documentation of the MAP recommendations and rationale, and reflects the consideration of input from the Working Groups.

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<sup>2</sup> [Reforming Environmental Regulation](#)

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## Reforming Environmental Regulation MAP Membership

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Sean Ashcroft, President

Amalgamated Prospectors and Leaseholders Association (APLA)

Simon Bennison, Chief Executive Officer

Association of Mining and Exploration Companies (AMEC)

Miranda Jane Taylor, Director Environment, Safety and Productivity

Australian Petroleum Production and Exploration Association (APPEA)

Piers Verstegen, Director

Conservation Council of Western Australia (CCWA)

Graeme Kininmonth, Manager Business Development and HSEC, Moly Mines Ltd

Representing The Chamber of Minerals and Energy WA (CMEWA)

Alan Sands, Director Environmental Regulation Division

Department of Environment and Conservation (DEC)

Phil Gorey, Executive Director Environment Division

Department of Mines and Petroleum (DMP)

Simon Skevington, Project Director Reform, MAP Facilitator

Department of Mines and Petroleum (DMP)

Nicky Cusworth, Deputy Director General Strategic Policy

Department of State Development (DSD)

Kim Taylor, General Manager

Office of the Environmental Protection Authority (OEPA)

Gary Peacock, Chairman, Private Property Rights & Resources Sub-committee

Pastoralists and Graziers Association of WA (Inc) (PGA)

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### 1.3 Previous Consultation by DMP

An extensive consultation program was conducted by the Department from 2009 including:

- Industry Working Group, presentations and workshops
- Liaison with other Government agencies
- Consultation with other industry and environmental stakeholders, including the Pastoralists and Graziers Association (PGA); Conservation Council of Western Australia (CCWA); and environmental consultants.
- Publication of discussion papers for public consultation
- Mining Securities Industry Liaison Committee (MSILC), which included representatives from the Association of Mining and Exploration Companies (AMEC), the Chamber of Minerals and Energy WA (CMEWA), the Amalgamated Prospectors and Leaseholders Association (APLA) and the Australian Resources and Energy Law Association (AMPLA)

A number of smaller reform projects were proposed as a result of this consultation and some of these were commenced. However, a lack of operational and dedicated project management resources has inhibited progress.



## 2 Background

### 2.1 Environmental Regulation by the Department of Mines and Petroleum

The Department of Mines and Petroleum is the lead agency for regulating mining and petroleum exploration and development activities in Western Australia through the administration of the:

- *Mining Act 1978*
- *Petroleum Pipelines Act 1969*
- *Petroleum and Geothermal Energy Resources Act 1967*
- *Petroleum (Submerged Lands) Act 1982*

Obligations for environmental management and reporting are established under these approval regimes.

DMP's legislation operates under the primacy of the *Environmental Protection Act 1986* (EP Act), and the department also regulates a component of this Act under delegation.

The environmental regulation of the resources sector by DMP operates within, and contributes to, a whole of government framework that includes:

- environmental impact assessment under Part IV of the EP Act administered by the Office of the Environmental Protection Authority (OEPA)
- works approvals, general environmental duty and pollution prevention obligations under Part V of the EP Act administered by the Department of Environment and Conservation (DEC).
- administration of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) by the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC).

The assessment process undertaken by SEWPaC is independent of DMP's assessment process and may require submission of additional documentation. DMP advises early consultation with SEWPaC to ensure that adequate time is allowed for approval processes.

Resource development projects also have approval requirements by the Department of Water (DoW) and the Department of Indigenous Affairs (DIA). DMP also provides advice to the Department of State Development (DSD) on the environmental management of activity on State Agreement Act tenure.

These relationships between the State and Commonwealth government agencies involved in environmental regulation are identified in Figure 2. Areas of duplication and overlap are identified and explained in Table 2.

The efficiency of the whole of government framework for environmental regulation requires clear delineation of roles and responsibilities for each agency. A clear scope of responsibility for each agency's regulatory program will reduce the areas of duplication created by uncertainty. It is important that formal mechanisms are established to articulate roles and responsibilities, such as legislative amendments, Memoranda of Understanding (MoUs) or administrative arrangements.

This process will provide DMP a clearer scope of responsibility to enable it to establish an effective, efficient and accountable environmental regulatory regime.

Figure 2: Duplication and overlap

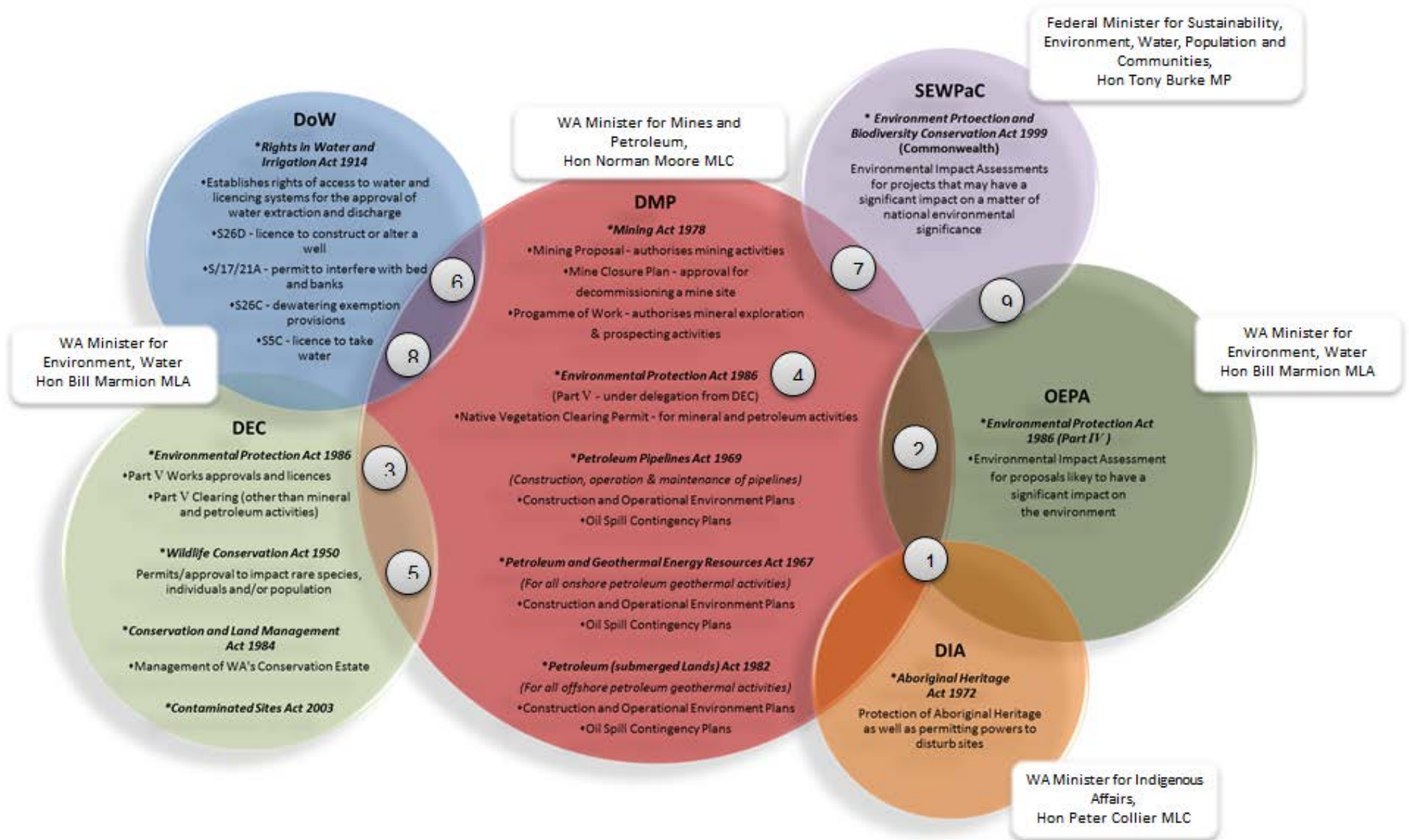


Table 2. Duplication and overlap notes (refer to Figure 2)

1	<p>To some extent, there is an overlap in the consideration of impacts to Aboriginal heritage. Whilst the Department of Indigenous Affairs (DIA) is the Lead Agency for consideration of Aboriginal heritage, it is also a factor considered by the Office of the Environmental Protection Authority (OEPA) in Part IV proposal assessments. The Department of Mines and Petroleum (DMP) also considers heritage in Mining Act and Petroleum Act environmental assessments. This is because of the definition of 'environment', which includes cultural aspects/heritage, as tested by case law. DMP will not consider heritage for proposals which have been assessed by the EPA, or proposals that have been referred to the EPA and 'not assessed', because it can be sure that the EPA has considered those issues. However, DMP consideration of heritage for proposals not referred to the EPA remains an area of duplication. DMP is completely reliant on DIA to make assessments as it does not have the technical expertise or access to the aboriginal sites register.</p>
2	<p>There is duplication between EPA Part IV assessments and DMP Mining Act and Petroleum Act assessments. However, there is liaison and administrative procedures between the two agencies in an attempt to avoid duplication and ensure consistency in condition-setting. DMP and EPA also have administrative arrangements in place to ensure specific aspects (e.g. Mine Closure) aren't duplicated in the assessment and condition-setting process.</p>
3	<p>To some extent, there is duplication between native vegetation assessments (10 Clearing Principles as defined in schedule 5 of the Environmental Protection Act) and the Department of Environment and Conservation (DEC) assessments under the <i>Wildlife Conservation Act 1950</i>, which also considers impacts to threatened/rare species and communities. There is no documented procedure in place to ensure Part V Clearing Permit conditions are consistent with authorisations under the <i>Wildlife Conservation Act 1950</i> (E.g. Section 23F Ministerial authorisation to take rare flora).</p>
4	<p>There is duplication <b>within DMP</b> between Native Vegetation assessments (<i>Environmental Protection Act 1986</i>) and Programmes of Work, Mining Proposals (<i>Mining Act 1978</i>) and Environment Plans (Petroleum Acts). As suggested by the Industry Working Group (2009) recommendation #14, this duplication could be addressed by merging the clearing permit requirements into the Mining &amp; Petroleum Acts.</p>
5	<p>There is duplication between DEC Environmental Protection Act Part V licences and works approvals and DMP Mining Act proposals. For example, a goldfields prescribed premise was used as a case study (for the purposes of this diagram) to compare Environmental Protection Act licence conditions, tenement conditions under the Mining Act and Mining Proposal content. Overlap/duplication was found in respect to:</p> <ul style="list-style-type: none"> <li>• Regular monitoring of groundwater levels and cyanide concentrations around the Tailing Storage Facility (condition on licence and mining tenement).</li> <li>• Inspection of pipelines daily for rupture (condition on licence and mining tenement).</li> <li>• Bunding/storage of hydrocarbons (discussed in licence Environmental Assessments Reports and Mining Proposal Assessment Reports).</li> <li>• Dust suppression (condition under Environmental Protection Act and Mining Act).</li> <li>• Impacts of saline water on surrounding vegetation (conditions under Environmental Protection Act and Mining Act).</li> <li>• Waste management (assessed in both processes).</li> <li>• Submission of Annual Environment Report (for both processes).</li> </ul> <p>Note that DEC is currently in the process of reforming its licencing requirements to improve efficiency, reduce duplication and be more environmentally effective.</p>
6	<p>A S26D approval to construct or alter a well under the <i>Rights in Water and Irrigation Act 1914</i> does not negate the need to get this activity approved under the <i>Mining Act 1978</i>, if the well/bore is located on Mining Act tenure.</p>
7	<p>There is likely to be some duplication in the assessment of environmental values by SEWPaC and by DMP (for Mining Proposals, Clearing Permits and Environmental Plans etc.) There are no procedures outlined in the Quality Management System for the assessment of Mining Proposals, Programme of Works, Mine Closure Plans or Environmental Plans to minimise duplication with the Commonwealth.</p>
8	<p>Until recently, there was duplication between the 'bed and banks' permit process and the <i>Mining Act 1978</i> approvals process (Programs of Works and Mining Proposals) for mining activities that involve disturbance to the bed and banks of a watercourse. The 'Administrative agreement between DMP and DoW for mineral exploration and mining operations in water resource areas of Western Australia' (March 2012) <a href="http://www.dmp.wa.gov.au/documents/Admin_Agreement_-_DMP-DeptOfWater-Mar2012.pdf">http://www.dmp.wa.gov.au/documents/Admin_Agreement_-_DMP-DeptOfWater-Mar2012.pdf</a> reduces duplication and clarifies the assessment and approvals requirements. For example, page seven of the administrative agreement outlines a revised policy for bed and banks permits: 'Under the <i>Rights in Water and Irrigation Act 1914</i>, exploration activities and mining operations in a proclaimed surface water area requires the proponent to obtain a permit to interfere with a bed and banks. However, unless the activity relates to the taking of water, by this policy, this is now not required, provided the activity is being conducted under the provisions of the <i>Mining Act 1978</i>, with necessary authorisation under that Act.'</p>
9	<p>The bilateral agreement between the Commonwealth of Australia and the State of Western Australia (under section 45 of the Commonwealth <i>Environment Protection and Biodiversity Act 1999</i>) relating to Environmental Impact Assessment, addresses the issue of duplication between SEWPaC and the EPA. <a href="http://www.environment.gov.au/epbc/assessments/bilateral/pubs/wa-signed-agreement.pdf">http://www.environment.gov.au/epbc/assessments/bilateral/pubs/wa-signed-agreement.pdf</a></p>

### 3 Recommendations

Table 3. Rationale and Expected Outcomes of MAP Recommendations

Recommendation	Rationale	Expected Outcomes
<b>Clear Environmental Objectives</b>		
<b>1. Establish clear and appropriate environmental objectives</b>	<ul style="list-style-type: none"> <li>DMP does not have clear environmental objectives to define the purpose, or measure the success of, its environmental regulatory functions</li> <li>Environmental objectives underpin risk-based environmental regulation and compliance activities</li> </ul>	<ul style="list-style-type: none"> <li>Clear, appropriate and measureable environmental objectives in place to define the purpose of DMP's environmental regulatory role.</li> <li>Outcomes-based environmental regulation</li> <li>Improved community confidence in DMP's environmental regulation</li> </ul>
<b>2. Develop meaningful outcomes-based performance indicators</b>	<ul style="list-style-type: none"> <li>Current KPIs only measure efficiency, have limited meaning and are not well understood</li> <li>No effectiveness KPIs are in place to measure achievement of environmental objectives</li> <li>Effectiveness KPIs demonstrate DMP's accountability for environmental regulation</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing monitoring and evaluation of outcomes-based KPIs to inform management decisions.</li> <li>Provide improved information on compliance trends through aggregation of KPIs to target regulatory effort in compliance promotion</li> <li>Improved transparency and accountability</li> <li>Improved community confidence in DMP's environmental regulation</li> </ul>
<b>3. Establish clear and enforceable environmental obligations for mining activities</b>	<ul style="list-style-type: none"> <li>There is currently an excessive number of different environmental tenement conditions in place under the Mining Act, and these need to be rationalised</li> <li>Some tenement conditions are out-dated, unnecessary, not outcomes-based, unclear, use inconsistent wording, lengthy and/or unenforceable</li> </ul>	<ul style="list-style-type: none"> <li>Environmental tenement conditions under the Mining Act reviewed to form a rationalised list, which are: necessary, outcomes-based, clear, concise and enforceable</li> <li>Generic/common conditions moved to legislation</li> </ul>
<b>4. Implement a robust and transparent relinquishment and abandonment process</b>	<ul style="list-style-type: none"> <li>DMP's current relinquishment processes are subjective and need to be formalised to inform regulator decision making and provide industry with more certainty and consistency</li> <li>Community stakeholders identified the need for an evidence-based relinquishment process</li> </ul>	<ul style="list-style-type: none"> <li>Clear, objective processes and standards implemented for project closure requirements under mining legislation and abandonment requirements under petroleum legislation.</li> <li>Improved community confidence in the relinquishment process</li> <li>Project closure requirements are risk-based and fit for purpose</li> </ul>
<b>Efficient Environmental Regulation</b>		
<b>5. Implement a full risk-based assessment and compliance methodology for environmental regulation</b>	<ul style="list-style-type: none"> <li>Current prescriptive regulatory framework is labour intensive and not proportionate to risk/complexity</li> <li>Auditor General recommended that DMP develop a formalised operational risk-based methodology for compliance inspection planning</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory effort and resource allocation is targeted and proportionate, such that regulatory effort protects environmental values in an effective, efficient and timely manner.</li> <li>Assessments and decision making by DMP is based upon a formalised risk assessment methodology recognising both approvals risk and operational risk.</li> <li>The success of implementation would be measured by the implementation of the risk-based approach within Government and industry.</li> </ul>
<b>6. Revise timelines and efficiency performance indicators in line with risk-based regulation</b>	<ul style="list-style-type: none"> <li>Timelines and KPIs currently do not consider risk/complexity of proposals (more complex or high risk = more time/resources/information required)</li> <li>Use of timelines needs to be supported by transparent guidance on their application, particularly stop-the-clock processes</li> </ul>	<ul style="list-style-type: none"> <li>Timelines and KPIs reflect the complexity of proposals</li> <li>Risk assessment criteria implemented to determine the level of complexity</li> <li>Transparent business rules published about the operation of 'stop the clock'</li> <li>Programmes of Work are valid for two years and further extensions to be contemplated in consideration of the risk-based approach</li> <li>Ongoing monitoring and evaluation of efficiency KPIs to inform management decisions</li> </ul>

Recommendation	Rationale	Expected Outcomes
<p><b>7. DMP will work with other agencies to improve efficiency and eliminate duplication</b></p>	<ul style="list-style-type: none"> <li>Industry and community stakeholders identified issues regarding approvals, compliance, reporting, proposals referred between agencies, information sharing and delegation of second tier approvals</li> <li>DMP needs to ensure that appropriate legal agreements/legislation/formal processes are in place for inter-agency arrangements</li> <li>Industry proposed the integration of Native Vegetation assessment into DMP's existing mining and petroleum approvals processes as a major recommendation in the Industry Working Group Report and Middle Review (both in 2009), to improve effectiveness and efficiency of clearing permit assessments.</li> <li>Industry considers that there is some duplication of approval processes between agencies, and that a case management model may resolve some of the issues</li> </ul>	<ul style="list-style-type: none"> <li>Roles and responsibilities of each agency are clearly defined and documented in business process maps</li> <li>Duplicated processes removed</li> <li>Formalised arrangements implemented to address issues, including: MoUs; detailed working arrangements; and legislative/policy/process changes</li> <li>Improved transparency, efficiency and effectiveness of inter-agency processes</li> <li>Shorter approvals timeframes</li> <li>Improved efficiency</li> <li>Case management model evaluated to assess whether it would improve efficiency and effectiveness, including feasibility of using a central approval document system, on-line and version-controlled</li> </ul>
<p><b>8. Improvements in cross-agency policies, such as the Lead Agency Framework, will be addressed in appropriate inter-governmental forums.</b></p>	<ul style="list-style-type: none"> <li>Industry requested: <ul style="list-style-type: none"> <li>clear, detailed information on what the Lead Agency Framework delivers for projects and how these deliverables are achieved for all Lead Agency Framework levels</li> <li>improved efficiency and effectiveness of the Lead Agency framework, as some approvals take longer through the framework than through normal channels</li> <li>expanded scope for projects to be included in Lead Agency process</li> <li>improved transparency over projects processed through the Framework</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>DMP's role in the Lead Agency Framework reviewed</li> <li>Clear, detailed information about what the Lead Agency Framework delivers for projects and how these deliverables are achieved for all Lead Agency Framework levels</li> <li>Other agencies alerted to issues with the Lead Agency Framework so that remedial measures can be developed where appropriate</li> <li>Improved service delivery to significant projects which may not meet criteria for Level 2 or Level 3 project</li> </ul>

### Improved Transparency and Communication

<p><b>9. Implement a formal Transparency Strategy for DMP</b></p>	<ul style="list-style-type: none"> <li>Industry and community stakeholders and previous independent reports have identified lack of transparency as a key issue for DMP's environmental regulatory processes</li> <li>Some stakeholders identified the need for: <ul style="list-style-type: none"> <li>increased direct contact between interested parties and the proponent for the resolution of issues</li> <li>public input on certain proposals prior to decision making</li> <li>opportunities for proponents and third parties to appeal certain decisions made by the department, with consideration given to the possibility of vexatious appeals</li> <li>Environmental Assessment and Regulatory System (EARS) to have better alignment with industry, regulator and community needs, including transparency, effectiveness, and compliance monitoring.</li> </ul> </li> <li>Community groups requested access to Mining Proposals and Mine Closure Plans at the pre-approval stage, in order to provide input early in the approvals process</li> <li>The Non-Government Industry Environment Forum (NIEF) Paper detailed principles that should be considered when improving transparency in government agencies: Procedural fairness; Accountability; Resourcing; Timeliness</li> </ul>	<ul style="list-style-type: none"> <li>Transparency Strategy implemented which identifies criteria and priorities for public release of information, considering issues such as: <ul style="list-style-type: none"> <li>commercial-in-confidence</li> <li>information burden</li> <li>resources required to manage the information</li> <li>possible impacts on approvals timelines.</li> </ul> </li> <li>Publication (where feasible and appropriate) of: <ul style="list-style-type: none"> <li>regulatory applications and submitted AER's (excluding commercially sensitive information) lodged with DMP</li> <li>DMP's regulatory assessment reports for Mining Proposals and Mine Closure Plans</li> <li>DMP approvals/granting instruments</li> <li>DMP's audit results.</li> </ul> </li> <li>Enhancements to EARS online system</li> <li>Improved transparency with regard to DMP's environmental standards and administrative processes</li> <li>Transparent appeals processes for DMP environmental decisions (note: there are differing views and expectations as to which, if any, new appeal mechanisms are to be implemented)</li> </ul>
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Recommendation	Rationale	Expected Outcomes
<b>10. Implement improved stakeholder consultation and communication</b>	<ul style="list-style-type: none"> <li>Stakeholders requested that they be kept updated on the implementation of RER recommendations and have continued opportunities for input</li> <li>Need to identify and promote excellence in environmental management</li> </ul>	<ul style="list-style-type: none"> <li>New stakeholder advisory mechanisms, such as establishing a Ministerial Advisory Panel with new terms of reference, or use existing, e.g. Mining Industry Liaison Committee (MILC)</li> <li>New Ministerial Advisory Panel to be established after the State Election, with an interim Director General's Advisory Panel in the meantime</li> <li>A comprehensive communications strategy, ensuring a coordinated approach to external communications. This could include: <ul style="list-style-type: none"> <li>Environment Open Day or city/regional Environment Road Shows</li> <li>Environment e-Newsletter etc.</li> <li>Increased online presence to share best practice ideas</li> </ul> </li> </ul>

### Effective Compliance Framework

<b>11. Establish an appropriate legislative framework for the environmental regulation of mining</b>	<ul style="list-style-type: none"> <li>There are clear shortcomings in the existing legislative framework for environmental regulation under the Mining Act. However, environmental regulation of the petroleum industry is strengthened through the environmental regulations under each of the WA Petroleum statutes</li> <li>The Mining Act may not be the most appropriate legislation for environmental regulation of mining activity. Grant of tenure confers the right to mine and environmental approvals become secondary. Mining Act also cannot regulate State Agreement tenure or Minerals to owner rights. However, alternative legislative frameworks may have long lead times</li> </ul>	<ul style="list-style-type: none"> <li>Clear enforceable obligations and powers</li> <li>Compliance tools including administrative orders and civil penalties are available for promoting and enforcing compliance at each of the three stages of project development: approvals, operation and closure, and all levels of non-compliance severity</li> <li>Effective legislative framework underpinning DMP's environmental compliance and enforcement activities</li> </ul>
<b>12. Examine the feasibility of implementing an external review mechanism for enforcement decisions of environmental compliance matters (other than EP Act process)</b>	<ul style="list-style-type: none"> <li>Several Australian jurisdictions have specialised court structures to support the administration of environmental and resource development legislation</li> <li>Review of decisions should be independent of the agency and the Minister</li> </ul>	<ul style="list-style-type: none"> <li>Appeals of enforcement decisions after internal review can be escalated to a Warden's Court, or other appropriate forum, for hearing</li> <li>The external review forum is appropriately resourced to manage any increased workload so that escalated appeals can be heard in a timely manner</li> </ul>
<b>13. Identify and articulate DMP's administrative framework for activities to promote compliance in a whole of government context</b>	<ul style="list-style-type: none"> <li>DMP needs to clearly articulate its objectives and administrative principles which underpin its administration of its compliance activities. This should document its planned tasks and decision-making processes for transparency of its operations</li> <li>There are currently articulated working arrangements with other environmental regulatory agencies for the delivery of the approvals process. There is no such coordination for the delivery of compliance tasks</li> </ul>	<ul style="list-style-type: none"> <li>Clear expectations from stakeholders regarding DMP's objectives, principles and planned operation on how these will be achieved to promote compliance</li> <li>Clear understanding of DMP's activities</li> <li>Clear guidance provided to stakeholders on how to achieve compliance</li> <li>Clear working arrangements with other government agencies to improve efficiencies and reduce duplication</li> </ul>
<b>14. Establish clear operational procedures to improve the efficiency, effectiveness and accountability of compliance delivery</b>	<ul style="list-style-type: none"> <li>There is currently no clear accountability for the delivery of compliance tasks; as compared to approvals and assessment, which is subject to KPI reporting and ISO9001 rating</li> <li>There is currently no information system for the capture and monitoring of compliance data</li> <li>The geographic distribution of resource development activity poses a significant challenge to maintain inspection presence</li> <li>There is evidence of duplication across government as several agencies will inspect the same site for different as well as duplicating issues</li> <li>There are inefficiencies of inspections within DMP where additional site visits are required to gather evidence for an investigation after first identifying a non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>Organisational structure and procedures provide for clear accountability for delivery of compliance outcomes</li> <li>There are appropriate controls to manage any perceived conflicts or risks from regulatory capture</li> <li>IT systems are utilised to enable information sharing between government agencies</li> <li>Risk-based inspection planning and risk-based reporting identifies non-compliances</li> <li>Inspection programs for all environmental regulators are coordinated</li> <li>Inspectors receive appropriate training to enhance their investigative skills</li> </ul>

## 3.1 Clear Environmental Objectives

### *Summary of issues*

A fundamental component of the RER Program is to establish risk-based and outcomes-based environmental regulation within DMP. This is unachievable without clear, overarching environmental objectives setting the outcomes to be delivered. Environmental objectives underpin risk-based, outcomes-based environmental regulation and compliance activities. DMP does not have clear environmental objectives to define the purpose, or measure the success of, its environmental regulatory functions. The establishment of clear environmental outcomes will enable DMP to establish outcomes-based KPIs, improve the clarity of the environmental obligations it imposes and inform relinquishment and mine closure processes.

### *Key observations and findings*

#### **Environmental Objectives**

The Governance Working Group members requested information to clearly understand DMP's environmental policy and regulatory objectives, with a view to identify gaps and recommend improvements to the current regulatory framework.

In response to the Working Group's request, DMP published the following information papers<sup>3</sup>:

- 1) *Benchmarking and measurement against leading practice policy, processes and outcomes*
- 2) *KPIs of DMP's environmental regulation*
- 3) *Mine closure guidelines – Environmental Outcomes*
- 4) *Establishing environmental objectives for DMP.*

The information provided by DMP revealed two significant gaps with respect to the Department's environmental regulatory role:

- there are no clear statutory or policy objectives in terms of environmental regulation for DMP
- there is no formalised framework for KPIs relating to environmental outcomes.

In addition to these significant information gaps, the Working Groups and MAP made the following key observations and recommendations.

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<sup>3</sup> Papers are located within the [Governance Working Group meeting papers](#):



- Overarching measurable environmental outcomes are needed throughout the life cycle of a project, from approval stage through construction, operational stage and closure. Proponents should be required to document how they are going to use environmental best practice throughout the project life cycle.
- Outcomes need to allow for improvements in technologies so that when the operation is nearing closure, the proponent is able to use state of the art methods and technologies for rehabilitation. The adaptive management framework of the Mine Closure Plan Guidelines allows proponents to update their closure plans to reflect best practice.
- The outcomes-based approach is required to give the community confidence in the environmental regulatory system.
- A proposal for DMP to adopt the OEPA's environmental objectives was discussed. It was agreed that the OEPA's objectives may be too broad and not appropriate for DMP. Fit for purpose environmental objectives need to be developed internally and then discussed with stakeholders.
- Environmental outcomes/objectives need to be linked to the regulator's Mission Statement or Vision. A holistic approach to the development of environmental outcomes/objectives would be a good starting point.

**Recommendation 1:**

**Establish clear and appropriate environmental objectives**

*Implementation:*

- DMP to develop draft environmental objectives and determine how these will be measured.
- Consult stakeholders on proposed environmental objectives.
- Implement environmental objectives into DMP's Environment Division Business Plan.
- Audit current performance and outcomes being achieved as a baseline.
- Evaluate environmental objectives (12 months following implementation).

## **Outcomes-based Performance Indicators**

DMP's current Key Performance Indicators (KPIs) only measure efficiency of approvals processes. No effectiveness KPIs are in place to measure achievement of environmental objectives. Effectiveness KPIs are necessary to demonstrate DMP's accountability for environmental regulation.

DMP's current KPIs are limited to the outputs and timeframes for its regulatory activities. While there is quarterly reporting and annual reporting of these KPIs they have limited meaning and are not well understood, and do not provide a robust evaluation of DMP's regulatory activity to achieve outcomes. Once DMP has established its environmental outcomes, it will be able to develop a system of outcomes-based KPIs.

A system of data collection, evaluation and reporting of outcomes-based KPIs will provide the following benefits:

- ongoing monitoring and evaluation of DMP's performance to inform management decisions
- improved transparency and accountability through meaningful communication of DMP's performance.

Data from all projects needs to be collated and analysed so that DMP can report on the effectiveness of its environmental legislation and regulatory processes. The design of KPIs will need to consider the type of data required, and the methods and ease of data collection.

### **Recommendation 2:**

#### **Develop meaningful outcomes-based performance indicators**

##### ***Implementation:***

- Once clear environmental objectives have been established, DMP to develop draft outcomes-based KPIs and determine how these will be measured.
- Consult stakeholders on proposed outcomes-based KPIs.
- Incorporate outcomes-based KPIs into DMP's Environment Division Business Plan.
- Report against outcomes-based KPIs in DMP's Annual Report.
- Evaluate outcomes-based KPIs (12 months following implementation).

## **Clear environmental obligations**

Currently, the key mechanism for imposing environmental obligations under the Mining Act is through conditions on tenement. Clear obligations are necessary to ensure industry understands its requirements, and are well-informed to comply with their requirements. Enforceability is crucial to establish an effective compliance and enforcement framework.

The Working Groups identified that the current system and wording of tenement conditions does not provide a robust and enforceable source of environmental obligations. There are currently an excessive number of different environmental tenement conditions in place under the Mining Act, and these need to be rationalised. Some tenement conditions are out-dated, unnecessary, not outcomes-based, unclear, use inconsistent wording, lengthy and/or unenforceable.

While DMP has already commenced a substantial review of mining tenement conditions, it was agreed that completion of this task should be given a priority as part of the RER recommendations. Dedicated resources are required to progress the work. There should also be a focus on moving to a legislation/regulation basis for common obligations.

The goal to establish outcomes-based conditions within DMP aligns with the work already being done by the OEPA in applying outcomes-based conditions to proposals approved under Part IV of the EP Act.

### **Recommendation 3: Establish clear and enforceable environmental obligations for mining activities**

#### ***Implementation:***

- DMP to complete a review of environmental tenement conditions to ensure they are necessary, outcomes-based, clear, concise, enforceable and deliver a net environmental benefit.
- Develop a rationalised list of environmental tenement conditions.
- Consult stakeholders on updated tenement conditions.
- Incorporate generic conditions in legislation/regulations.
- Implement updated conditions.
- Evaluate updated conditions (12 months following implementation).

## **Relinquishment process for project closure**

The current standard for project closure is based on: 'safe, stable, non-polluting, functioning ecosystem'. While this is useful, alternative land use outcomes for agreed community benefit also need to be considered.

DMP's current relinquishment processes are subjective and need to be formalised to inform regulator decision making and provide industry with more certainty and consistency. Currently, mining proponents must comply with their Mining Proposal, and Mine Closure Plan as part of their tenement conditions. Petroleum operators must comply with their Environment Plan. However these require clear, measurable and enforceable obligations within those documents. For example, environmental outcomes from the Mine Closure Plan Guidelines are too prescriptive, and only cover the environmental outcomes for the end of the mining process.

The environmental regulatory structure needs to be evidence-based, with proponents required to prove to DMP that an area has been rehabilitated to an acceptable standard for that project before site relinquishment and abandonment (bonds retired, conditions deleted, tenements or titles surrendered). Clear, objective processes and risk-based standards should be implemented for project closure requirements under the Mining Act and petroleum legislation and recognise project specific environments.

For projects under the *Mining Act 1978*, bank-guaranteed unconditional performance bonds currently act as the main incentive for meeting closure and relinquishment obligations. Bonds affect borrowing capacity and company reputation. In the transition to the MRF system, DMP's environmental compliance regime will need to provide comparable incentives and enforcement powers to those currently delivered by bonds. Transition to an MRF without comparable incentives and enforceability in relation to fulfilling Mine Closure Plan obligations presents a significant risk to the state.

**Recommendation 4:**

**Implement a robust and transparent relinquishment and abandonment process**

***Implementation:***

- Revise current relinquishment process in line with a risk and outcomes-based framework.
- Consult stakeholders on revised relinquishment process.
- Implement revised relinquishment process.
- Evaluate the revised relinquishment process (12 months following implementation).

## 3.2 Efficient Environmental Regulation

### *Summary of Issues*

The regulatory framework in place at present is labour intensive and its activities and timelines are not proportionate to risk and complexity of projects. In addition, industry considers that there is some duplication of approval processes between agencies and improved efficiency and effectiveness of the Lead Agency Framework is needed.

Issues with approvals, compliance, reporting, referrals, information sharing and delegation of second tier approvals were identified by industry and community stakeholders.

### *Key observations and findings*

#### **Environmental Risk Model**

DMP prepared a draft paper '*Environmental Risk Model – Implementation of a risk-based model for environmental regulation*', which was presented to the Working Groups for discussion and feedback. It was agreed that the proposed DMP framework clearly articulates and formalises a risk assessment process and places the onus on determining risk and residual risk on the proponent.

While the members generally expressed support for the implementation of a risk-based approach (which includes all projects), CCWA indicated that more information around rigour and transparency would need to be delivered before it could support the recommendation.

Items identified by Working Group members for consideration in developing the Environmental Risk Model include:

- Clear and agreed environmental outcomes/objectives are required for effective risk assessment.
- The importance of ensuring accord between the DEC, OEPA and DMP on risk-based frameworks for environmental regulation.
- Recognition of environmental sensitivity in the area of operation.
- Avoid making the risk assessment too 'big' that it ultimately fails and impacts on the ability to have better environmental outcomes.
- The goal is for high level risk assessment to prioritise management actions.
- The methodology should be fit-for-purpose.
- Penalties should be proportionate to the risk.
- Legislation needs to be clear and enforceable.

It was suggested that while a risk-based approach may require more information input, it should lead to departmental resources being better targeted.

The Western Australian Auditor General (2011), CMEWA (2011) and the Red Tape Reduction Group (2010) have all previously made recommendations around the introduction of a risk-based assessment and compliance methodology for environmental regulation.

**Recommendation 5:  
Implement a full risk-based assessment and compliance methodology for  
environmental regulation**

***Implementation:***

- A risk-based framework relevant to DMP may be developed over the next twelve months.
- Fundamental tasks are:
  - Review current risk-based assessment and compliance process decision making within DMP and other regulators.
  - Develop a risk-based framework specific to DMP, including appeals processes and escalation protocols for disputes.
  - Consult with stakeholders on current and proposed risk-based processes.
  - Implement full risk-based processes.

**Timelines**

It is proposed that criteria should be developed for timelines to match the complexity or proposals; perhaps in the three categories of 'simple', 'moderate' and 'complex'.

It was acknowledged that timelines are a target or guideline only. Efficiency KPIs will need reviewing if new timelines are developed.

*Programmes of Work (PoWs)*: the validity of PoWs is currently twelve months and has been flagged as impractical for both industry and government. It is recommended the validity of PoWs is extended to two years, and for further extensions to be contemplated in consideration of a risk-based approach. It was clarified that tenement conditions will still require that the individual disturbances are rehabilitated within six months.

*'Stop-the-clock'*: Use of timelines need to be supported by transparent guidance on their application, particularly 'stop-the-clock' processes. A review is requested which will take into

consideration matters such as escalation protocols, proponent/peak body's education and the maximisation of opportunities for parallel processing.

*Outsourcing:* The exploration of opportunities for external involvement in regulatory activities was proposed by both industry and DMP Environment Division. CCWA expressed concern regarding the potential for conflict of interest. DMP suggested that areas to explore for third party involvement may include system development, test work and auditing, but not assessments or inspection activities.

It was suggested that there could be a role for third party contractors to validate information for proponents to improve quality and timelines. It was noted a peer review process for proponents would be a potential tool to improve approvals efficiency.

The Industry Working Group (2009), CMEWA (2011) and AMEC (2012) have previously made recommendations encouraging agency use of external resources.

**Recommendation 6:  
Revise timelines and efficiency performance indicators, in line with risk-based regulation**

***Implementation:***

- Program of Work validity duration – to be extended to two years, and the appropriate duration to be reviewed through consultation with stakeholders and consideration of what is occurring in other jurisdictions.
- Develop new timelines based on complexity criteria and review 'stop-the-clock' for implementation by 1 July 2013.
- Outsourcing – DMP policy position to be prepared for further consultation to identify which regulatory activities may be appropriate for third party involvement.

**Roles and responsibilities**

Clear roles and responsibilities for agencies were noted as being crucial in addressing approvals process issues, particularly in the area of duplication.

A systematic method of clarifying roles and responsibilities between DMP and other agencies may be to document what is currently in place, 'evaluate', 'consult', 'plan' and then 'implement'. It was agreed that Memoranda of Understanding (MoU) should provide more detail for increased clarity between agencies.



It was established that the DEC and DMP need to develop a MoU (or similar) for mining and petroleum approvals to address roles, responsibilities, inspection, compliance and information sharing.

DMP needs to ensure that appropriate legal agreements/legislation/formal processes are in place for inter-agency arrangements.

The Keating Review (2012) has previously made recommendations on the establishment of administrative arrangements, such as MoUs, to clarify responsibilities and to enable agencies to more efficiently discharge their responsibilities.

*Native Vegetation Clearing Permits:* It was noted that the process for a Native Vegetation Clearing Permit is more detailed than the current Mining Proposal process. If the clearing principles could be integrated into Mining Proposal and Programme of Work (PoW) processes, then the potential for exemptions could be explored so that the clearing principles may be adequately addressed in the one process.

The Industry Working Group (2009) made a recommendation regarding the integration of the clearing principles into the mining and petroleum proposal assessment processes.

*'Case management' model:* may resolve some of the approvals process duplication issues experienced by Industry.

The concept of a continuously evolving common approval document, with version control for staged approval processing was considered (the document could exist in an on-line environment). It was concluded that while there may be some issues associated with the concept, it is worthy of consideration in a potential case-management model.

**Recommendation 7:**

**DMP will work with other agencies to improve efficiency and eliminate duplication**

***Implementation:***

- Define and document the current information sharing arrangements, roles and responsibilities.
- Evaluate inter-agency arrangements and case management model.
- Plan remedial measures (e.g. MoUs, detailed working arrangements, legislative/policy/process changes).
- Consult stakeholders on proposed remedial measures.
- Implement remedial measures.

## Lead Agency Framework

Projects included on the Lead Agency list (level two and three projects) are based on size and complexity criteria. DMP, as a Lead Agency, assists with the coordination of approvals (i.e. not a 'facilitator').

Industry has identified that the Lead Agency Framework has had limited effect on addressing its concerns on matters such as approvals process duplication, lack of timeliness and lack of transparency, particularly in the case of level one projects.

It was noted that some of the improvements that have occurred to assist level one projects, such as online lodgement and approvals tracking, are not well publicised. A DMP Lead Agency Toolkit is being developed in consultation with AMEC and CMEWA.

Issues for consideration in a broader review of the DMP Lead Agency Framework review may include:

- duplication, timeliness and transparency
- clear, detailed information about what is being currently delivered and how the deliverables are achieved for all Lead Agency Framework levels
- whether it is achieving what it was originally intended to
- the possibility of an expanded scope of projects to be included in the process
- whether the framework is still a priority of government
- benchmarking against similar regulatory regimes.

### **Recommendation 8:**

**Improvements in cross-agency policies, such as the Lead Agency Framework, will be addressed in appropriate inter-governmental forums**

#### ***Implementation:***

- Review DMP's implementation of its role in the Lead Agency Framework.
- Consult with stakeholders on proposed enhancements and implement by the end of 2013.
- Utilise appropriate inter-governmental forums to discuss and improve cross-agency policy

### 3.3 Improved Transparency and Communication

#### *Summary of issues*

Industry and community stakeholders and previous independent reports identified the lack of transparency as a key issue for DMP's environmental regulatory processes.

Some stakeholders identified the need for:

- increased direct contact between interested parties and the proponent for the resolution of issues
- public input on Mining Proposals and Mine Closure Plans prior to decision making
- opportunities for proponents and third parties to appeal certain decisions made by DMP
- greater transparency over how DMP determines whether a project is significant enough for referral to EPA
- DMP's information system, the Environmental Assessment & Regulatory System (EARS), to have better alignment with industry, regulator and community needs, including transparency, effectiveness, and compliance monitoring
- KPIs monitoring and reporting for meaningful communication of DMP's performance to industry and the community.

Stakeholders requested that they be kept updated on the implementation of RER recommendations and have continued opportunities for input.

In addition, DMP's provision of information, guidelines and policy needs to identify and promote excellence in environmental management.

Prior to DMP implementing the transparency framework, the criteria, priorities, benefits and risks of publishing information need to be determined, with consideration of the various factors below identified by MAP and the Working Groups.

#### *Key observations and findings*

##### **Transparency**

DMP developed a 'Summary of transparency in decision making in environment approvals' <sup>4</sup>document for consideration by the Governance Working Group. The Working Group identified that:

- Proposed tasks need to be assessed and prioritised

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<sup>4</sup> Papers are located within the [Governance Working Group meeting papers](#) – 8 October 2012:

- Considerations include commercial-in-confidence, information burden, resources to manage information, and impacts on approvals timelines.

Seven key areas were identified and discussed to improve transparency:

1. Public notification of all regulatory applications lodged with DMP – this will involve publishing summary information on the DMP website about a lodged application (applicant name, tenement/title location of proposal and activity description).
2. Opportunity for public input on Mining Proposals and Mine Closure Plans prior to decision making.
3. Publication of DMP's regulatory assessment reports for Mining Proposals and Mine Closure Plans.
4. Opportunities for proponents and third parties to appeal certain decisions made by DMP.
5. Publication of all approvals/granting instruments.
6. Public availability of all submitted AERs (excluding commercially sensitive information)
7. Publication of DMP's audit activity (details on the number of audits and inspections undertaken by DMP, the number of non-compliances identified and enforcement actions undertaken).

CMEWA tabled a paper on behalf of the Non-Government Organisation and Industry Environment Forum (NIEF) entitled: 'Transparency in Mining Assessments and Regulation'<sup>5</sup>. The NIEF paper details some principles that should be considered when improving transparency as well as some analysis of the existing level of transparency in other government agencies: procedural fairness, accountability, resourcing and timeliness.

The Governance Working Group supported the recommendations in the NIEF Paper:

- Expand DMP transparency targets to include the four fundamental levels of 'communication', 'consultation', engagement' and 'statutory requirements/accountability'.
- Develop a standardised agency approach or a single online access point for tracking approvals applications and reporting agency performance.

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<sup>5</sup> Papers are located within the [Governance Working Group meeting papers](#) – 8 October 2012:

- Develop a single online access point for agency information regarding approvals processes including legislative requirements, proponent and agency responsibilities, communication channels and statutory timeframes.

### **Publication of approvals documents**

Transparency is not just about regular reporting from DMP; it is about third-party verification of how decisions are made at the four key decision points:

- Programmes of Work (PoWs)
- Mining Proposal
- Mine Closure Plan
- Annual Environmental Reports (AERs)

CCWA recommended that documents around the decision points need to be accessible to the public, and at pre-approval stage, so that the public can have a say prior to approval being given. DMP could advertise approvals for public comment on the DMP website. There is also currently no public register of breaches and DMP environmental enforcement actions.

#### *Programmes of Work*

- With over 3,000 PoW applications each year, it is impractical to publish all of them and make them subject to public appeal. Much of the information is also commercially sensitive.
- PoW information is of interest to a discrete group, and access could be given based on a demonstrable interest, but there may be issues in managing this access. MAP decided that it is not practicable to publish Programs of Work at this time.

#### *Mining Proposals and Mine Closure Plans*

- Mining Proposals and Mine Closure Plans at pre-approval stage are a priority for increased transparency.
- Under section 38 of the *Environmental Protection Act 1986* Mining Proposals may be referred to the OEPA by third parties. CCWA considers that there needs to be greater transparency over how DMP determines whether a project is significant enough for referral to OEPA.
- If Mining Proposals were made public, this would achieve greater transparency without requiring a formal public consultation process, and may encourage direct contact between interested parties and the proponent for the resolution of issues.

Timeline impacts are unlikely, as the period for referral would occur concurrently with DMP's assessment of the proposal.

### *Annual Environmental Reports*

- DMP is developing systems to allow industry to submit AERs online, and is working with stakeholders on making summary (non-confidential) information from the AERs public.
- CCWA is not satisfied with 'summary information'; however Mining Proposal post-approval conditions are already public, so the community will be able to determine what has been achieved.
- If non-compliance is reported publicly in AERs and not addressed, the regulator and industry are exposed to risk. The Victorian Environmental Protection Authority is facing significant legal challenges with publication of AER's. Publication of AER data requires a mature environmental regulator with an effective compliance regime.

#### **Recommendation 9: Implement a formal Transparency Strategy for DMP**

##### ***Implementation:***

- Evaluate feasibility/issues for publication of:
  - DMP's regulatory assessment reports for all Mining Proposals and Mine Closure Plans.
  - Approvals/granting instruments.
  - Annual Environmental Reports (excluding commercially sensitive information).
  - DMP's audit activity (details on the number of audits and inspections undertaken by DMP, the number of non-compliances identified and enforcement actions undertaken).
- Develop the draft Transparency Strategy including:
  - Consider procedural fairness, accountability, resourcing, and timeliness.
  - An appeals process for DMP environmental decisions (noting there are differing views and expectations as to which, if any, new appeal mechanisms are to be implemented).
  - Review and enhance EARS online tracking system:
    - Include a post-approvals compliance monitoring system.
    - Provide information on approvals referred to other agencies.
- Consult with stakeholders.

## Ongoing Consultation on Reform

An ongoing review mechanism including stakeholder consultation was proposed, to ensure that recommendations are implemented. This may also include evaluation of existing advisory mechanisms.

Industry suggested that the Directors General Working Group (DGWG) include oversight of the reform implementation process as an ongoing agenda item, to help drive the changes.

MAP recommends the establishment of a new Advisory Panel with new terms of reference. This will continue the forum for stakeholder input and direction on the implementation of reforms by DMP. This should commence in early 2013 with representation from the stakeholder groups currently represented on MAP.

### **Recommendation 10:**

#### **Implement improved stakeholder consultation and communication**

##### *Implementation:*

- Evaluate existing stakeholder advisory mechanisms e.g. Mining Industry Liaison Committee (MILC).
- Develop ongoing stakeholder advisory mechanisms.
- Develop a comprehensive communications strategy to ensure a coordinated approach to external communications. This could include:
  - Environment Open Day or city/regional Environment Road Shows.
  - Environment e-Newsletter etc.
  - Increased online presence to share best practice ideas.
- Consult with stakeholders.
- Implement Communications Strategy and advisory mechanism.

## 3.4 Effective Compliance Framework

### *Summary of issues*

Compliance assurance is fundamental to maintain the integrity of the regulatory regime. While external reform pressures in Western Australia have typically focused on approvals performance, more recently there has been increased focus on compliance to ensure a robust regulatory regime.

- Since 2009, DMP has been reviewing and implementing improvements to its compliance and enforcement program.
- In 2011, the Western Australian Auditor General's Report identified the need for DMP to improve the transparency and accountability of its compliance procedures.
- In 2012, the recent passing of the Mining Rehabilitation Fund Act provides further impetus for a robust compliance regime.

### *Key observations and findings*

#### **Legislative framework for compliance on mine sites**

The Compliance Working Group focused on regulation of mining as the environmental regulation of the petroleum industry is strengthened by the recent passing of environmental regulations under each of the WA Petroleum statutes.

There are clear shortcomings in the existing legislative framework for environmental regulation under the *Mining Act 1978*, and the Compliance Working Group identified the Mining Act may not be the most appropriate legislation for environmental regulation of mining activity, for the following reasons.

- The Mining Act is founded on the administration and regulation of land access rights through grant of tenure.
- Environmental obligations are imposed through secondary approvals via conditions on tenement, under the primacy of the *Environmental Protection Act 1986*.
- The Mining Act has no jurisdiction without Mining Act tenure and therefore cannot regulate State Agreements or Minerals to Owner rights.

The Working Group identified that a whole of government analysis is required to identify the optimum legislation and administrative framework for the holistic environmental regulation of mining. However, due to the enormity of this task, it may be necessary to develop an effective compliance and enforcement framework under the Mining Act as a first step.



An effective compliance framework is founded on: clearly articulated environmental outcomes; and clear and enforceable obligations imposed by the assessment and approvals regime which reflect those outcomes. These two requirements have also been identified for implementation by the Approvals Working Group<sup>6</sup> and will inform DMP's development of an improved compliance framework.

The key aspects identified by the Compliance Working Group were that the compliance regime needs to have effective machinery that can:

- Impose specific obligations to address emerging risks not identified in approval obligations.
- Promote and enforce compliance with obligations through a range of compliance tools, including administrative orders and civil penalties.
- Be applicable to all stages of project development: approvals, operations and closure.

**Recommendation 11:**

**Establish an appropriate legislative framework for the environmental regulation of mining**

*Implementation:*

- Define the scope of DMP's environmental regulation responsibility to inform the establishment of clear and enforceable environmental obligations under the Mining Act with a range of tools to promote and enforce compliance at all stages of project development.
- Identify opportunities for whole of government arrangements and legislation for the environmental regulation of mining.

**External Review of Enforcement Decisions**

The need for an external review forum was acknowledged, to provide the benefit of independent review of enforcement decisions such as administrative orders, if escalated above the initial internal review process. Several Australian jurisdictions have specialised court structures to support the administration of environmental and resource development legislation. Specialist courts provide expertise in their fields and provide an independent review of agency decisions. The appropriate forum would need to be resourced to manage any increased workload and role, so that escalated appeals can be heard in a timely manner.

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<sup>6</sup> MAP Recommendations 1, 2 and 3

The Warden's Court, established under the Mining Act, is currently responsible for hearing and determining objections to the grant of tenure. The Compliance Working Group suggested investigating whether the Court's role could be expanded, if appropriate, to consider compliance matters. Other options include the use of the State Administrative Tribunal.

**Recommendation 12:**

**Examine the feasibility of implementing an external review mechanisms for enforcement decisions of environmental compliance matters (other than Environmental Protection Act processes)**

*Implementation:*

- In the development of legislation, identify the functions required by an independent external review forum
- Assess the feasibility of available forums to provide those functions and required resourcing.
- For functions deemed appropriate and feasible, establish the necessary legislative provisions.

**Administrative Framework**

DMP needs to clearly articulate its objectives and principles which underpin its administration of enforcement and compliance activities. This should document its planned tasks and decision-making processes to establish clear expectations from stakeholders. This will have the benefits of:

- establishing clear expectations from stakeholders regarding DMP's objectives, principles and planned activities
- establishing a clear rationale for how DMP's activities will promote compliance.

There are currently articulated working arrangements with other environmental regulatory agencies for the delivery of the approvals process, for example, an MoU exists with the OEPA.

Currently there is no such coordination for the delivery of compliance tasks between government agencies. There are clear opportunities to improve working arrangements with other environmental regulators such as the OEPA and the DEC to improve efficiencies and reduce duplication of inspections and compliance information collection.

### **Recommendation 13:**

#### **Identify and articulate DMP's administrative framework for activities to promote compliance in a whole of government context**

##### **Implementation:**

- DMP to develop and publicly release an objectives statement identifying its compliance goals and planned activities to meet those goals.
- DMP to establish formal administrative working arrangements with other State environmental regulators for the shared delivery of compliance outcomes.

### **Operational Procedures**

The geographic distribution of resource development activity across WA poses a significant challenge to maintain inspection pressure; and compliance monitoring models in WA require industry self-assessment and reporting. Compliance monitoring relies on two key sources:

- industry reporting requirements through tenement conditions for AERs
- DMP's site inspection regime.

The Compliance Working Group provides the following observations and recommendations to improve the efficiency of compliance monitoring.

- Industry's reporting requirements to DMP should be clearly identified in their environmental obligations and align with risks to environmental outcomes under the Mining Act.
- There are inefficiencies of inspections:
  - *across government* - several agencies will inspect the same site for different as well as duplicating issues. To improve inspection presence and information collection, DMP should explore utilising potential synergies with the inspection regime of other environmental regulators.
  - *within DMP* – follow-up site visits are required to investigate and collect evidence after identifying non-compliance on inspection. DMP's efficiency could be improved through further investigation skills training for staff.
- An IT system is needed to manage the compliance process, so that inspectorate staff can monitor progress and readily see the past history for each company/site. It was noted a 'Post Approvals Compliance Monitoring' unit for DMP's EARS system has been flagged for development and this would contribute to the collection and accessibility of compliance monitoring information.

Currently, the DMP staff responsible for assessment and approvals of resource activities are also responsible for compliance monitoring and enforcement. However, these employees are subject to KPIs for assessment and approval activities to maintain its ISO9001 rating. Approvals statistics are publicly reported each quarter on DMP's website. To improve DMP's environmental compliance and enforcement framework, there needs to be equivalent accountability for delivering compliance services.

**Recommendation 14:**

**Establish clear operational procedures to improve efficiency, effectiveness and accountability of compliance delivery**

***Implementation:***

- Formalise the risk-based inspection planning approach.
- Coordinate inspections and compliance information sharing with other environmental regulators.
- Provide investigation skills training to environmental officers.
- Develop the appropriate information systems to enable the collection, monitoring and reporting of compliance data.
- Establish clear responsibility and accountability for environmental officers for the delivery of compliance outcomes through compliance KPI monitoring and reporting.

## 4 Evaluation and Continuous Improvement

Systems will be implemented to ensure ongoing effectiveness and efficiency is embedded in DMP's environmental regulation:

- External accreditation of all environmental regulatory processes.
- Ongoing monitoring and reporting of key performance indicators informs resource allocation and identifies opportunities for improvement.
- Improvements to operations and services are informed by external peer and stakeholder reviews of processes.
- Environmental practices which go beyond the level required for compliance are promoted and recognised.

Feedback from the proposed ongoing stakeholder consultation mechanism (under Recommendation 10) will also inform DMP on the effectiveness of reforms and identify improvement opportunities.

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