# Ministerial Advisory Panel Background Sessions

# Session 1: Overview of DMP's environmental regulation functions

## Objective

To provide background information to the history, role and context of the department's regulatory functions.

## History

The Department of Mines and Petroleum (DMP) has, in various forms, existed since the 1890s. DMP, in its current form was established on 1 January 2009, with the separation of the Department of Industry and Resources (and the Department of Consumer and Employment Protection) into the Department of State Development (DSD), the Department of Commerce, and DMP.

DMP is now the State's lead agency in attracting private investment in resources exploration and development through the provision of geoscientific information on minerals and energy resources, and management of an equitable and secure titles systems for the mining, petroleum and geothermal industries. It also carries prime responsibility for regulating these extractive industries and dangerous goods in Western Australia, including the collection of royalties, and ensuring that safety, health and environmental standards are consistent with relevant State and Commonwealth legislation, regulations and policies.

The environmental regulatory function of DMP has evolved into a core function of the department since the early 1980s (when the new *Mining Act 1978* allowed specific conditions on mining leases for environmental management). The requirement for secondary approvals following tenure grant were progressively implemented with the *Mining Act 1978* (which repealed the *Mining Act 1904*). While the requirement for a secondary environmental approval on mining tenure has been in place since the commencement of the *Mining Act 1978*, other secondary environmental approval requirements were variously introduced (both administratively and legislatively) over the following years, for example:

- the *Mining Act 1978* was amended in 1990 to introduce the powers to place conditions on exploration and prospecting tenements to control environmental impacts
- the specific requirement for Mining Proposals was introduced in 2006, replacing the 'notice of intent', and in 2010, the specific requirement for Mine Closure Plans was introduced into the *Mining Act 1978*
- from 1999 to 2011, the department administered under delegation environmental regulations for petroleum activities in commonwealth waters

- the requirement for environmental plans for onshore and offshore petroleum activities was introduced administratively in 1999, with regulations currently under preparation to place this requirement in legislation.

Also, from 1990 to 2004, DMP was administering the requirements for assessing native vegetation clearing through a delegation from the Commissioner for Soil and Land Conservations, under the *Soil and Land Conservation Act 1945*. The *Environmental Protection Act 1986* was amended in 2004 to introduce the requirements of native vegetation clearing assessment (and remove them from the *Soil and Land Conservation Act 1945*). On 1 July 2005, DMP was delegated the powers to assess and issue native vegetation clearing permits on mineral and petroleum tenure under the *Environment Protection Act 1986*. This delegation remains in place.

In February 2005, the Environment Division was first formed as a standalone division. The division was staffed through bringing together officers who were working on environmental matters from strategic policy areas of the department, as well as from the Safety, Health and Environment Division, and the Petroleum Division. At that time the division had around 30 officers.

## Current Role and Function of the Environment Division

The principle role of the Environment Division is to promote best practice environmental management by delivering high quality and timely environmental regulatory and policy services.

The division works closely with industry to encourage mining and petroleum proponents to participate in best practice methods when exploring for, operating or rehabilitating mining, petroleum, the geological storage of greenhouse gases or geothermal projects. In order to do this effectively, the division regularly liaises with other key departments including the Department of Environment and Conservation (DEC), the Office of the Environmental Protection Authority (OEPA), Department of Water (DoW) and the Department of Indigenous Affairs (DIA).

The key roles of the division include:

- administering the environmental aspects of State mineral and petroleum legislation
- assessing, auditing and monitoring environmental aspects of mining and petroleum projects
- providing incident investigation services and initiating the department's enforcement policy as required
- liaising with core stakeholders and benchmarking the division's performance against customer expectations
- regulating the provisions of the native vegetation clearing regulations for the resources sector
- providing strategic policy advice regarding State and Commonwealth environmental initiatives that may affect the regulation of, and access for, the resources sector, including environmental assessment policies, legislation and planning.

The Department's Environment Division is also responsible for updating existing and developing new environmental guidelines and policies and publishing these to ensure industry is well informed about correct industry practices.

The Division also coordinates the annual Golden Gecko Awards for Environmental Excellence which recognises demonstrated leadership and excellence in environmental practices in the mineral and petroleum sector.

The Environment Division now has approximately 60 officers employed under the *Public Sector Management Act 1994*, and another 8-10 contractors. The division has a functional structure within the Approvals Group of the department (Figure 1).

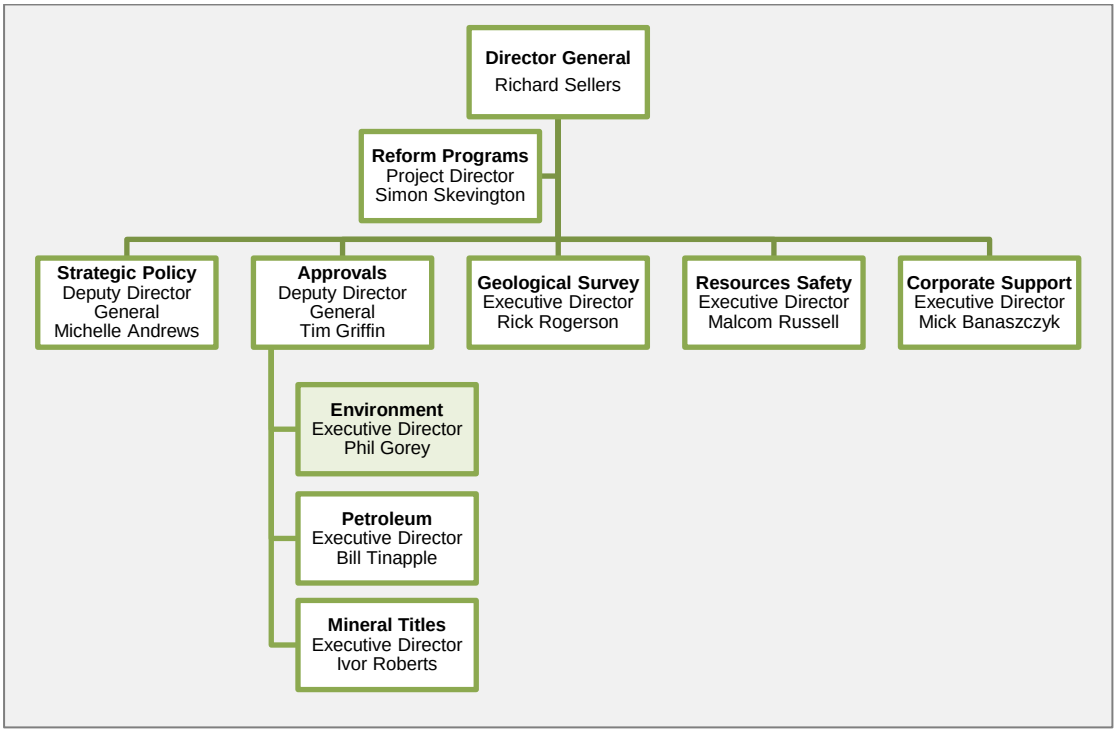


**Figure 1: Simplified organisational structure DMP**

## Statutory Environmental Functions of DMP

The majority of the functions of the Environment Division are in regulatory services. While DMP is responsible for the administration of 21 different acts of parliament, the principle functions for the division are in the administration of approvals under:

- *Mining Act 1978*
- *Petroleum Pipelines Act 1969*
- *Petroleum and Geothermal Energy Resources Act 1967*
- *Petroleum (Submerged Lands) Act 1982*
- *Environmental Protection Act 1986* (under delegation)

These acts establish requirements for operators to obtain approvals, under which the obligations for environmental management (and reporting) are established. There is currently a proposal for specific environmental regulations under the three petroleum Acts to be adopted which will also include statutory environmental obligations in additional to approval conditions.

The regulatory activities of the division relate directly to the assessment of proposals under this legislation, and occur as specific approvals as detailed in Table 1. The assessment of proposals is a critically important role for the department as it ensures

that adequate environmental practices are incorporated into the design, and that these practices are clearly established before any operation commences. It is also the process which allows exploration and development to proceed (as these approvals are required by legislation to be issued).

**Table 1: List of principle regulatory environmental approvals**

| ***Form of Approval*** | ***Purpose*** | ***Governing legislation*** | ***Annual No. Approved*** |
|---|---|---|---|
| Mining Proposal | Authorises mining activities | *Mining Act 1978* | *350* |
| Mine Closure Plans | Approval for decommissioning of mine site | *Mining Act 1978* | *200* |
| Programmes of Work | Authorises mineral exploration | *Mining Act 1978* | *2500* |
| Native Vegetation Clearing Permit | Authorises the clearance of native vegetation for petroleum or mineral activities | *Environmental Protection Act 1986* | *250* |
| Environment Plans | Authorises onshore petroleum or geothermal activities | *Petroleum and Geothermal Energy Resources Act 1967* | *100* |
| Environment Plans | Authorises offshore petroleum activities in State waters | *Petroleum Submerged Land Act 1982* | *50* |
| (Construction and Operational) Environment Plans | Authorises the construction and operation of pipelines in State waters or lands | *Petroleum Pipelines Act 1969* | *20* |
| Oil Spill Contingency Plans | Plans required to accompany any petroleum applications | *Each of the three petroleum acts listed above* | *15* |

The process for assessing proposals warrants individual assessment of the detail of the applications, and each application is required to be:

- registered and undergo screening to ensure the adequate information is present
- be technically assessed by experienced environmental assessors to ensure that the design and practices proposed do not result in unacceptable environmental impacts
- have appropriate conditions developed to ensure that the activity is conducted in accordance with best practice
- be specifically approved through the issuing of an authorisation or amendment of tenement conditions.

As part of the assessment process, the assessment officers liaise with the proponent, or other regulatory agencies (including Australian Government agencies) to ensure that appropriate design, operation and conditions are applied to the development. To ensure high quality of a decision making, the assessment will always be subject to

peer review. Inspections may also be appropriate to conduct as part of the approval process. This is particularly important where there are new techniques or technologies being applied, where the surrounding environment is particularly sensitive, or where the current environmental performance of the proponent may be critical to the assessment process.

The approvals granted by the department are authorised on the basis of the activities being undertaken in a certain manner. It is therefore critical for the integrity of the approvals system that there is a robust compliance program. The purpose of the compliance oversight function is to monitor the level of compliance of the industry operators with their regulatory obligations, and deliver effective and timely responses to non-compliance. The division undertakes around 200 inspections a year. Non-compliance is addressed in accordance with the department's compliance and prosecution policy; with the regulatory response escalating from verbal directions to the applications of fines or prosecution actions.

In addition, there are administrative activities which will be the result of these regulatory functions, such as ensuring that environmental securities are kept up to date. This requires the department to assess the progress undertaken with the works and approve the level of environmental securities. This only applies to activities approved under the *Mining Act 1978*.

The rehabilitation of abandoned mines is also a responsibility which is coordinated from within the Environment Division.

Due to the decision making authority obligations (as defined under the *Environmental Protection Act 1986*), the Environment Division is also responsible for providing advice on its assessment of projects of environmental significance.

The delivery of these statutory functions are supported by the ongoing improvement in Information and Communication Technologies (ICT), information and publication services, and legislative and policy frameworks.

Around 90% of the division's resources are assigned to these regulatory functions.

## Non-Statutory Environmental Functions of DMP

The principle non-statutory functions of the division relate to the areas of providing advice to other agencies, contributing to the development of State and federal environmental policies relating to the mineral and energy sector, and promotional activities. The provision of advice for State Agreement Act projects are included in this function.

The delivery of the Golden Gecko's award (now in its 21st year) is also a non-statutory environmental activity of DMP.

## Overview of Western Australia's regulatory framework for the mineral and energy sector

The regulatory framework for mineral and energy resource projects in Western Australia involves multiple agencies, Acts and regulations. The applicable legislation, approvals and environmental obligations include those which are specific to the mineral and energy resources industry, and those which apply more broadly to the community or business sector.

Each Act needs to be read in its context to provide the full scope of approvals, licences and environmental obligations required, however as a summary, the below description (Table 2) lists the more relevant legislation.

**Table 2: Principal Environmental Legislation for the Mineral and Energy Resources industry in Western Australia**

| ***Legislation*** | ***Environmentally relevant approvals and obligations*** |
|---|---|
| *Environmental Protection Act 1986* | Applies broadly to all people and businesses (not only the mineral and energy resources sector), and establishes the provision for independent environmental impact assessment (Part IV), environmental pollution offences, and the issuing of ongoing licences for specific activities (Part V). The Part V licensing includes the regulation of native vegetation clearance (which is administered by DMP by delegation), as well as works approvals and licences. Works approvals and licences directly relevant to the mineral and energy resources sector include for certain mineral processing, mine dewatering, and oil and gas production.<br>Specific regulations are also established under this Act to control certain matters (e.g. noise, controlled wastes). |
| *Mining Act 1978* | This Act primarily regulates land access for mineral resource exploration and development. Land access is authorised by the issuing of licences or leases which are subject to conditions. These conditions require compliance with environmental plans (including Mining Proposals, Mine Closure Plans or Conservation Management Plans). Exploration activities are approved by an officer authorised under the Act.<br>Almost all mineral exploration and development in WA requires approval under this Act, with the most common exemptions being those authorised under specific State Agreements and those extractive industry activities authorised by local shires. |
| *Petroleum Pipelines Act 1969* | This Act provides the approval and regulation of petroleum pipelines, including the granting of tenure. Tenure is granted under the Act and directions are issued under the Act to comply with (Construction and Operational) Environment Plans and Oil Spill Contingency Plans.<br>DMP is preparing specific environmental regulations (for this Act and the following two petroleum related acts) to strengthen the regulatory controls for these plans. |
| *Petroleum and Geothermal Energy Resources Act 1967* | This Act regulates land access and petroleum and geothermal exploration and development (generally) for onshore areas of WA. As for the *Petroleum Pipelines Act 1969*, once tenure is granted, directions are issued to tenement holders to comply with Environment Plans and Oil Spill Contingency Plans. Under these directions, the tenement holder is also required to comply with other plans including Well Construction Plans (which also address environmental aspects).<br>All onshore petroleum and geothermal activities in Western Australia require approval under this Act, with the exception of those projects approved under specific legislation. |
| *Petroleum (Submerged Lands) Act 1982* | This Act replicates the same regulatory arrangements as the *Petroleum and Geothermal Energy Resources Act 1967* for those areas of the State not covered by that Act (generally the offshore areas). |

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| *Environment Protection and Biodiversity Conservation Act 1999 (Cwth)* | Allows for the Australian Government to undertake environmental impact assessments for projects that may have a significant impact on a matter of national environmental significance. The Act provides for assessments and approvals (separately or together) to be delegated to another authority. The Western Australian Environmental Protection Authority currently has an agreement to undertake assessments on behalf of the Australian Government for certain projects, and is currently renegotiating the scope and operation of this agreement. |

There is other State (and Commonwealth) legislation that applies environmental controls and/or obligations on the mineral and energy resources sector beyond the list above. There are at least 25-30 other Acts which apply to mineral and energy resources projects (although this will depend upon the nature and location of the proposed project). The additional legislation is listed in Table 3.

For instance, the *Mine Safety and Inspection Act 1994* is primarily focused on ensuring that worker safety is adequately protected for the mining industry. To support this, the Act requires that operators prepare and comply with a Project Management Plan which must identify the range of potential risks to worker safety, and minimise these risks as much as is reasonably practical. One of the potential risks which is common to both the environment and worker safety is geotechnical stability, and therefore by addressing this matter under the Project Management Plan, the matter is also able to be addressed for environmental risks. There is further legislation which is applicable to the mineral and energy resources sector which is not specifically discussed as it does not form a large component of the work of the agency (e.g. the *Offshore Minerals Act 2003*).

**Table 3: Other Relevant Environmental Legislation for the Mineral and Energy Resources industry in Western Australia**

| ***Legislation*** | ***Environmentally relevant approvals and obligations*** |
|---|---|
| *Conservation and Land Management Act 1984* | Administered by DEC, to cover the management of the state's national parks, marine parks, conservation parks, state forests and timber reserves, nature reserves, marine nature reserves and marine management areas. |
| *Aboriginal Heritage Act 1972* | Establishes obligations to protect aboriginal heritage, as well as the recording, assessment and management of these sites. There is also permitting powers under the Act (e.g. approval to disturb a site). |
| *Contaminated Sites Act 2003* | Provides the regulatory powers for the identification, recording, management and remediation of contaminated sites across Western Australia. It applies to all state lands, including areas of mining and energy resource projects. |
| *Wildlife Conservation Act 1950* | Legislation which establishes the requirement for protection of threatened species, as well as processes for approving impacts on individuals and/or populations (eg permits to take). |

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| *Rights in Water and Irrigation Act 1914* | Administered by the Department of Water, establishes rights of access to water, and licensing systems for the approval of water extraction and discharge. |
| *Mines Safety and Inspection Act 1994* | Establishes responsibilities and obligations for protecting worker safety, and approval (e.g. Project Management Plans) and penalties to administer the regime. |
| *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwth) | Federal legislation for the regulation of the petroleum and geothermal industry in Commonwealth waters. Of note, the proposed environmental regulations for the Western Australian petroleum acts largely replicate the regulations under this Act. |

DMP has released on its website a standard Gantt chart for the key approvals required for uranium mining (although it is applicable to most forms of mining) and is currently preparing a simple standard Gantt chart for petroleum developments.

## Opportunities for appeal relating to environmental regulation in Western Australia for the mineral and energy sector

There are various statutory appeal provisions which are in place in Western Australia for mineral and energy resource projects. While the appeal provisions are specific to the relevant legislation (and there can be as many as 30 different Acts relevant to key approvals for a proposal), the main appeal provisions are listed in Table 4

**Table 4: Opportunities for appeal relating to environmental regulation for the Mineral and Energy Resources industry in Western Australia**

| ***Appeal Option*** | ***Application*** |
|---|---|
| *Warden's Court* | The Warden's Court is established under section 127 of the *Mining Act 1978* and deals with matters referred to in section 132 (in which the warden is acting in a judicial capacity). The Warden's Court has jurisdiction (see section 132) to hear all actions capable of being heard in any civil court of appropriate jurisdiction such as:<br>• the boundaries and encroachment on tenements<br>• ownerships to tenements and minerals<br>• disputes on water used for mining<br>• performance of contracts relating to mining<br>• matters of payments and expenses on tenement<br>• certain damage to land arising from mining. |
| *State Administrative Tribunal* | The State Administrative Tribunal (SAT) was established in 2005 as an independent body that makes and reviews a range of administrative decisions. With respect to statutory appeal provisions for environmental regulation for the mineral and energy resources industry in WA, SAT does not have any jurisdiction.<br>However, SAT does have an operation in administrative law relating to some secondary approvals relevant to the mineral and energy resources industry in WA. For example, appeals against decisions of the in relation to water entitlements under the *Rights in Water and Irrigation Act 1914* can be considered by SAT |

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| *Appeals Convenor* | The Appeals Convenor is a statutory office established under section 107A of the *Environmental Protection Act 1986.* The role of the Appeals Convenor is to give advice and make recommendations to the Minister for Environment on environmental appeals made under the *Environmental Protection Act 1986.* This includes appeals relating to:<br>• decisions of the EPA in relation to assessment of development proposals and planning schemes<br>• decisions of the Department of Environment and Conservation (DEC) in relation to licensing and approval of prescribed premises<br>• decisions of the DEC and DMP in relation to clearing native vegetation, and<br>• the conditions and requirements of compliance notices including environmental protection notices, closure notices, vegetation conservation notices and prevention notices (issued by the DEC or Local Government). |
| *Judicial review* | The Supreme Court has inherent jurisdiction to review administrative decisions. Many environmental decisions made by departmental officers are made pursuant to conditions on tenements. As these are administrative decisions, as a matter of administrative law they are reviewable in court if there is a question around the lawfulness of the decision making process. The court can review questions such as whether a decision was reasonable, whether the affected person has been afforded natural justice, whether irrelevant considerations were taken into account, and other established grounds of judicial review. |

# Session 2: Environmental reform initiatives already commenced or delivered by DMP

## Objective

To provide a summary of the progress to date with environmental regulatory reforms within DMP.

## Approvals Reform

DMP has been implementing regulatory reform programs for its environmental functions as an ongoing program over the past few years. This reform has focused on improving the efficiency and effectiveness of approvals in line with the government priority for approvals reform.

The reforms have reflected immediate priorities, yet are aligned with the four principle themes which are the basis of the RER initiative. As a summary, the reforms projects are described below.

**Service Delivery**

Reform projects undertaken to ensure that the functions and activities undertaken by DMP are delivered in accordance with best practice environmental regulation.

- *Risk based assessment trials.* From 2010, DMP has been trialing various models for risk assessment for assessments and compliance oversight. These models have contributed to learnings, however a formal, consistent risk assessment model is yet to be implemented.
- *Condition setting review.* A review has commenced into the effectiveness of conditions setting for environmental approvals.
- *Compliance and enforcement review.* In 2011, a review was completed into the enforcement processes for environmental approvals, resulting in streamlining changes to administrative processes, and the timeliness of non-compliance being addressed.
- *Independent review of compliance powers.* The division has recently initiated an independent review of compliance provisions under the *Mining Act 1978* to ensure that they are in line with best practice regulatory principles.
- *Mine closure planning reform.* In 2011, DMP introduced the provisions for Mine Closure Planning for all mining projects, including the publication of comprehensive Mine Closure Plan Guidelines.
- *Mining securities reform.* A two year reform program to ensure that the mining securities framework for Western Australia is adequate (further described below).
- *Unconventional gas reform.* A structured program to ensure the controlled exploration and development of onshore unconventional gas in Western Australia (further described below).

- *Streamlining tenement conditions.* Implemented standard conditions for exploration on conservation estate – including the introduction of the Conservation Management Plan process.

**People**

Reform projects undertaken to ensure that DMP has the necessary people, skills, knowledge and capacity:

- *Formalised, competency based training program.* In 2012, the division commenced the development of a formal training program for all officers in the division which includes evidence based assessments of competency. The program is likely to be completed by the end of the year.
- *Competitive salary mechanisms*. In June 2012, DMP made a submission to the Department of Commerce to replace the existing Attraction and Retention Bonus with a performance based Attraction and Retention Incentive.
- *Organisational structure review*. In early 2012, an external review was undertaken to ensure that the management structure within the division was effective and supported the implementation of the RER program.
- *Establishment of an Approvals Group*. In 2010, DMP brought together the divisions of Petroleum, Mineral Titles and Environment into a single Approvals Group coordinated under the new position of Deputy Director General Approvals.

**Information**

Reform projects undertaken to ensure that information is well managed and available, and informs operational decision making, policy development and public opinion.

- *Adoption of Transparency Strategy.* In 2011, the division released a Transparency Strategy to guide improved transparency practices for environmental regulation in DMP.
- *Expansion of online lodgment and tracking*. Since 2009, the division has progressively implemented ICT solutions to streamline and improve transparency for the assessment process. This has including online lodgment functionality for exploration applications, mining proposals, mine closure plans and environment plans. In addition, online tracking of applications has also been implemented and being expanded. There remains considerable opportunities for expanding the functionality and DMP has a three year ICT implementation strategy (to 2015) to prioritise outstanding ICT reforms.
- *Performance reporting*. Since 2009, DMP has also been reporting its performance against assessment target timelines. This functionality will continue to be expanded, including greater detail and coverage of regulatory activities.

**Continuous Improvement**

Reform projects undertaken to ensure that systems are in place to ensure ongoing effectiveness and efficiency is embedded in DMP's environmental regulation:

- *Expanding accredited quality management system*. The division has continued to maintain ISO accreditation for its QMS for its environmental regulatory processes. The division is already planning for all of the environmental regulatory processes to be accredited within three years.

## Mining Securities Review

The principal objective of mining securities is to ensure that sufficient funds are available to government to rehabilitate mine sites in the event that operators do not fulfill their mine rehabilitation and closure obligations. In doing so, mining securities provide confidence to both the government and the community that satisfactory rehabilitation and closure will be achieved.

In 2010, DMP commenced a review into the State's current mining securities system for all 'Mining Act' projects (which essentially comprises the State's small to medium-sized mining projects) due to concerns that the current system posed an increasing financial risk for the State.

The current mining securities system requires companies to post environmental bonds with DMP prior to approval to mine. Since bonds for the mining industry were originally introduced in the late 1980s, the bond rates have not kept pace with the rising costs of rehabilitation and it is now estimated that the current level of bonds cover only around 25-35 per cent of the total cost to rehabilitate. In the event that companies fail to complete their rehabilitation and closure obligations, the government would therefore be required to meet the difference from general revenue.

An obvious solution was to increase bonds to cover 100 per cent of rehabilitation and closure costs, but it was recognised that doing so would have a significant financial impact on the industry, and would not provide a complete solution to the exposure risks of abandoned mines. The aim of the DMP's review, therefore, was to identify any suitable alternative options that would address the State's risk.

Following a period of consultation spanning 18 months, DMP has now developed its preferred option for the State's future mining securities system. The preferred option is that the government establish a government-administered pooled fund, to be known as the Mining Rehabilitation Fund, which will provide the primary mechanism for the State to ensure that funds will be available to address abandoned mines.

The new system will require mining companies to make non-refundable annual contributions, based on a percentage of an amount approximating their total closure liabilities, into the fund which will be used to rehabilitate mine sites where operators fail to meet their environmental obligations, and where all reasonable compliance options have been explored and another operator cannot be found to take over the liability.

The fund model has the added benefit of providing a funding source, through interest earned on the fund, for the remediation of existing abandoned mines and the additional administrative resources required. The Mining Rehabilitation Fund model is therefore considered by DMP to provide the greatest net benefit to the government, industry and the community.

To enable the introduction of the Mining Rehabilitation Fund, legislation will need to be introduced into Parliament.

## Unconventional Gas Reform

Onshore gas includes 'unconventional gas' which is a term that describes tight, shale and coal seam gases. Unconventional gas differs from conventional gas because the characteristics of the rock formations prevent the gas from flowing freely through the rock during recovery. Conventional gas resources are contained in sandstone and

carbonate rocks that allow the gas to flow freely. For unconventional gas the rock formations need to undergo hydraulic fracture stimulation (also known as fraccing) to release the gas and enable recovery.

There is much community interest in the unconventional gas industry in Western Australia, particularly the use of hydraulic fracture stimulation. This interest has been heightened by issues in eastern Australia and overseas, where surrounding activities are often in shallow reservoirs with a small separation from groundwater resources.

To ensure that the regulatory framework in Western Australian delivers responsible development of this resource, while protecting the environment, groundwater resources and public health, DMP has commenced a number of recent initiatives. Key progress which has been made to ensure WA's regulatory framework meets global best practice, while being supported by appropriate and transparent processes, standards and guidelines, includes:

- *Independent Review Report*. DMP commissioned an independent review of the regulatory framework for shale, coal seam and tight gas activities in Western Australia. The reviewer, Dr Tina Hunter from Bond University, is an expert in petroleum law and the activities of the petroleum industry – concluded that the current regulatory processes are stringent and supported by skilled and dedicated staff. However there are areas that should be further strengthened. Dr Hunter identified the need to improve legal enforceability through developing new environmental and resource management regulations.
- *Environmental Protection Authority Advice*. The EPA has provided guidance to the Government and industry, on the regulation of onshore gas activities through Environmental Protection Bulletin No. 15. The EPA recognised the lower risks and deeper hydrocarbon reservoirs for onshore Western Australia when compared with other jurisdictions and examined DMP's regulation of the activities. It decided not to formally assess a number of referred onshore gas proposals. The EPA noted that it will maintain a watching brief on the development of DMP regulatory arrangements, including working with DMP to ensure the community and industry has appropriate information and guidance.
- *Interagency Working Group*. DMP has established an interagency working group to ensure a coordinated and comprehensive approach to the regulation of onshore gas activities. The State Government Departments of Water, Environment and Conservation, Health, Agriculture and Food and EPA are represented on the working group.

Arising from these areas of work, DMP has commenced a reform program to achieve the following outcomes, to:

- propose legislative amendments to:
    - strengthen enforcement provisions for regulators
    - mandate full disclosure of chemicals
    - mandate public release of approved Environment Management Plans.
- revise DMP policies, procedures, guidelines and activities to:
    - improve community consultation by industry participants
    - target compliance auditing plan for onshore gas activities
    - improve consultation agreements with other government agencies.

The legislation is currently being finalised before being provided to the Minister for Mines and Petroleum for consideration, and progress has also occurred with revising policies, procedures and guideline in consultation with other key agencies.

## Auditor Generals Review

Over 2010 and 2011 the Office of the Auditor General undertook an audit into the compliance of conditions in the mining industry. The review looked at a number of agencies, however much of the focus was on DMP. The review occurred over almost 12 months, and included up to two auditors being working within the DMP offices at times. The report was published in October 2011.

While the report did not find evidence of any environmental non-compliance which had not been responded to by DMP, it made a range of recommendations for improvement. These recommendations generally covered improvements in transparency, improved record keeping, and completion of existing processes to implement risk based systems. Specifically the recommendations, and the progress, are summarised in Table 5 below:

**Table 5: Progress with recommendations of the Office of the Auditor General 2011**

| ***Recommendation*** | ***DMP progress on responding to recommendation*** |
|---|---|
| *Government and agencies should: Finalise policy arrangements for environmental offsets to ensure transparency in their application and monitoring.* | DMP has contributed directly to the development of the Government's Environmental Offsets Policy published in September 2011 and is now contributing to the development of accompanying guidelines.<br><br>DMP has implemented the following measures relating to this recommendation:<br>• DMP provided policy and technical advice into the Government's Environmental Offsets Policy to further the objectives of accountability, transparency and evidence-based decision making.<br>• DMP is a member of an interagency working group, led by DEC, which is developing the Environmental Offsets Policy Guidelines. These guidelines will ensure that the new policy is implemented consistently with the objectives of the policy.<br>• DMP already provides a public record of all environmental offsets which it requires through the publication of approved native vegetation clearing permits. DMP only requires environmental offsets through conditions of native vegetation permits. |
| *Government and agencies should: Resolve and formalise arrangements for monitoring and enforcement of conditions on State Agreement Act projects.* | DMP and the Department of State Development (DSD) have commenced a review of environmental compliance monitoring and enforcement policies and practices for State Agreement projects. The agencies are in the process of formalising the operational arrangements to ensure there are consistent standards of approval conditions, monitoring, and compliance, across both State Agreement Act and non-State Agreement Act projects. DMP and DSD expect this review to be completed during 2012. |

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| *Government and agencies should: Finalise changes to arrangements for mine closure financial securities to reduce financial risk to the State.* | Over the last two years DMP has been undertaking a major review into the adequacy of the current securities system for mine sites in Western Australia. The establishment of the Mining Rehabilitation Fund (as described in detail above) will implement this recommendation. |
| *DIA should ensure that mining operators comply with conditions under Section 18 of the Aboriginal Heritage Act 1972. This will include conducting adequate monitoring and inspections.* | The Department of Indigenous Affairs is leading the implementation of this recommendation. |
| *DMP should: improve processes for monitoring and inspection of compliance with environmental conditions, specifically:*<br>*1) determine base levels of environmental monitoring and inspection required to provide adequate assurance about compliance with conditions*<br>*2) ensure that it reviews and assesses Annual Environmental Reports as they are received*<br>*3) formalise review and approvals procedures for inspection reporting*<br>*4) finalise risk assessment processes for inspection planning.* | The key approach that DMP is pursuing is a risk-based approach to regulatory effort to ensure that the resources of Government are focused on those areas of potentially unacceptable environmental risks. DMP has been working to implement these risk based approaches to its monitoring and compliance functions over the last few years.<br><br>The RER program announced in May 2012 will provide the mechanism for the implementation of these recommendations in a consultative way with industry. The final recommendations arising through the RER and MAP process are proposed to cover the long term implementation plan for these recommendations. |
| *DMP should: Collect and analyse information on all non-compliance, and report it appropriately. This will include introducing the full post-approval capabilities of its data management system.* | In 2008, DMP initiated the development of an electronic system to collect and analyse information in relation to assessments and reporting requirements. In 2009, DMP implemented its environmental data management system - the Environmental Assessment and Regulatory System (EARS) that records assessment and approvals information. In 2010, DMP commenced work to extend EARS to include a "Post Approvals Compliance Monitoring" (PACM) module. The new module is expected to be operational in late 2012 and will improve the accessibility of compliance data and DMP's analytical capability. This will be used to analyse and demonstrate the effectiveness of its inspections.<br>DMP has also completed substantial information technology changes to improve the data linkages between the agency's various regulatory databases and strengthen the interrogation functionality. This has been particularly focused on the interaction between the department's records management system and the Environmental Assessment Regulatory System (EARS). |

In addition to the report from the Auditor General, there are other reports which have been undertaken to inform the department of the effectiveness of the regulatory system, and more, recommendations to improve the environmental regulatory framework. These include the Hunter Report on Regulation of Shale, Coal Seam and Tight Gas Activities in Western Australia (July 2011), the Uranium Advisory Group Independent Review of Uranium Mining Regulation (April 2012). For each of these reviews the departments has adopted an implementation strategy to respond to the recommendations.

## Linkages to the MAP RER Process

The existing reforms described above, particularly those that are still be delivered, will be aligned to the overall reforms which the MAP advise on. This will occur through the provision of the existing detail of reforms being presented to the Working Groups, so that the issues, gaps and opportunities can either be incorporated into existing reforms, or be used to develop new reform tasks.

# Session 3: Other relevant State and Federal reforms

## Objective

To provide a summary of environmental regulatory reforms being implemented by other relevant agencies.

## The lead agency framework (whole of government)

In October 2009, the Premier announced the introduction of a Lead Agency Framework with the goal to establish a seamless approvals system that can deliver the necessary approvals within an acceptable timeframe and cost to proponents and government, while taking into account the public interest.

DMP was one of the State agencies identified as a Lead Agency (for mineral and petroleum developments), with the other lead agencies being the Department of State Development (for major resource and industry infrastructure projects), the Department of Planning (for urban and regional land and significant housing development), the Department of Transport (for transport projects), and the Department of Regional Development and Lands (for administering the Royalties for Regions fund).

The Lead Agency Framework means that DMP is responsible for overseeing the whole application approval process and will liaise with other agencies where required. This is achieve by:

- utilising application tracking and approval management systems to monitor the whole approvals process
- providing "case management" services for more complex proposals, and
- continuing to improve its own processes, through systems upgrades to provide for online lodgment and enhanced online tracking services, and improving checklists and guidance materials.

DMP publishes on its website a list of projects being provided with case management services under the Lead Agency Framework.

Implementation of the Lead Agency Framework is kept under review by the Director Generals Working Group, which includes Director Generals from relevant approvals agencies. The Director General's Working Group has recently combined with the separate Land Access Working Group to cover these issues in a consistent way.

The work program for the Director General's Working Group include the oversight of the other specific projects, such as the implementation of new procedures for the assessment and approval of conservation offsets as part of the EIA process.

## Implementation of an offshore petroleum regulator (NOPSEMA)

Following the release of the Productivity Commission report into regulatory burden on the upstream petroleum sector, and the Montara Commission of Inquiry Report, the Australian Government committed to implementing national offshore petroleum regulator reform. The key aspects of this reform was made operational on 1 January 2012.

While the reform included a number themes regarding petroleum title management, and petroleum safety, it also included expanding the scope of the National Offshore Petroleum Safety Authority (NOPSA) to include environmental management. The resulting organisation, the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA), is now responsible for environmental regulation of petroleum activities in Commonwealth waters. Prior to 1 January 2012, DMP undertook this role through delegation.

In developing its administration of the environmental regulations, NOPSEMA is promoting for operators that its processes will be implementing principles of best practice environmental regulation, including that:

- the EIA process (and compliance) will have risk and proportionality as a central theme
- the regulatory process will be outcome-based, with the responsibility on the proponents to identify risks, and appropriate mitigation strategies
- the administrative processes of NOPSEMA will be governed by a formalised QA/QC management system
- assessment and environmental performance information will be publicly available
- the EIA process will be administered by competent and skilled officers.

Given the recent establishment of NOPSEMA, they are presently resourcing the publication of various EIA and regulatory guidelines to inform the industry and stakeholders of their administrative approach.

## Review of environmental impact assessment process (EPA)

The EPA is the primary source of independent environmental advice to government on significant development proposals. In February 2008, recognising new and complex challenges in providing this advice, the EPA began a review of Environmental Impact Assessment (EIA) and its underpinning significant development proposals.

The EPA completed its review of the EIA process in March 2009.

The Government adopted the recommendations of the review and the EPA has been implementing the reforms. The reform program includes 47 review recommendations and aims to improve the timeliness and effectiveness of the EPA's functions through:

- introducing outcome based conditions where appropriate;
- use of risk based assessment where applicable;
- improved project tracking in the Office of the EPA;
- greater rigour and consistency in the scoping phase;
- a greater focus on timelines;

- providing more guidance to proponents to improve certainty, clarity and consistency; and
- creating the new Office of the EPA (OEPA) to better support the work of the EPA.

Collectively, these reforms were designed to achieve a thorough, clear, consistent and timely environmental impact assessment process that meets the expectations of the community.

Since the completion of the review, the implementation of the recommendations has seen the implementation of specific initiatives relevant to the mineral and energy resources sector, including:

- trialling, and subsequent publication of guidance on the application of risk based environmental impact assessment
- amendments to the Environmental Protection Act 1986 to streamline appeal provisions
- publishing specific guidance to streamline and improve certainty on EIA matters such as minor or preliminary works or investigation work, hydraulic fracturing of gas reserves, guidance on the assessment of benthic primary producer habitat, and procedural aspects of consultation on conditions recommended by the EPA
- undertaking a major review of the Administrative Procedures, including updating the bilateral agreement for environmental impact assessment with the Australian Government
- progressing inter-agency collaboration, including the co-publication of the Mine Closure Plan Guidelines
- implementing outcome-based conditions into the EIA process, including consultation on draft conditions, and how proposals are defined.

In June 2012, the Office of the Environmental Protection Authority also commenced consultation on the introduction of a fee structure for the EIA process.

## Review of regulation for protection of Aboriginal heritage (DIA)

The Department of Indigenous Affairs is undertaking a review into the effective operation of the *Aboriginal Heritage Act 1972*, and in April 2012 released a discussion paper outlining concerns and potential opportunities for change.

While matters of Aboriginal heritage are not specifically identified by the provisions of the legislation administered by DMP, it can be captured as a result of the view that heritage matters can fall within the definition of "environment". For this reason, both DMP and EPA have been in the position of considering Aboriginal heritage matters within their EIA processes.

DIA are currently seeking submissions on seven specific proposals which have been prepared to address the concerns of the effectiveness of the application of the *Aboriginal Heritage Act 1972*. These proposals were prepared by Dr John Avery who was appointed as an independent consultant to the State Government to advise on reforming the Act. Discussions with industry stakeholders, and the establishment of an Inter-Agency Working Group on Aboriginal Heritage Reform (including representation from DMP), were used to contribute to these proposals.

## Re-engineering for industry regulation and environment (DEC)

The Department of Environment and Conservation (DEC) have commenced an industry regulation reform program, principally through Re-Engineering for Industry and Environment (REFIRE) and the Industry Licensing System (ILS).

This reform is across all of the business sectors which DEC regulates, and is designed to make the licensing process more robust, enforceable, efficient and, most of all, consistent.

## Federal environmental regulatory reforms

There are a variety of environmental reforms proposed, or already initiated, by the Australian Government. The reforms are either directly related to environmental regulation, or have secondary impacts on the environmental regulation of the mineral and energy resources sector for Western Australia.

The linkages between these various reforms, the overarching principles of reform being promoted by the Australian Government, and the application in practice are not always clear. However this is, in part, due to the early stages of some of these reform initiatives.

As a summary, the principal environmental regulatory reforms already underway at the federal level are briefly described in Table 6.

**Table 6: Australian Government reform initiatives relevant for environmental regulation of the mineral and energy resources industry in Western Australia**

| ***Reform initiative*** | ***Description*** |
|---|---|
| *Review of EPBC Act* | In August 2011 the Minister for Sustainability, Environment, Water, Population and Communities released the government response to the independent review of the EPBC Act. The reforms intended to<br>• deliver better environmental protection focusing on whole regions and ecosystems and faster environmental assessments<br>• provide a consistent national approach to environmental impact assessments that removes duplication, cuts red tape, and<br>• provide better upfront guidance on legislation requirements, with more long-term certainty and transparency.<br>To progress these reforms, it is being promoted through COAG that by March 2013, all bilateral agreements with the states (and territories) will be updated to cover environmental standards and bilateral arrangements for accreditation of state assessment and approval processes. |
| *Amendment of fees for EPBC Act* | In late 2011, the Australian Government released a discussion paper on the introduction of referral fees under the EPBC Act. The comment period has closed, and the Department of Sustainability, Environment, Water, Populations and Communities (SEWPAC) are continuing to consider the submissions received. |

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|---|---|
| *COAG Working Group on Environmental Regulatory Reform* | Also described under the national Agenda for Environmental Regulation Reform, this initiative is covering key issues for streamlining environmental regulatory matters. The current work priorities are to progress:<br>• national standards for environmental impact assessment<br>• greater use of strategic approaches<br>• national threatened species listing, and<br>• national standards for offsets and biodiversity banking. |
| *Work program for the Standing Council on Energy and Resources (SCER)* | One of the current priorities of SCER is to progress toward the development of a national regulatory framework for coal seam gas based on world's leading practice (although this does not necessarily cover other forms of unconventional gas). In addition, SCER has also established a working group to address land access issues for the mineral and energy resources sector focusing on developing a world-class multiple land use framework which will ensure that coexistence rather than exclusion is a fundamental driver in land use policy. |
| *Work program for the Standing Council on Environment and Water (SCEW)* | Among other things, the priority of this Ministerial Standing Committee is to pursue seamless environmental regulation and regulatory practice across jurisdictions. |
| *(Interim) Independent Expert Scientific Committee on Coal Seam Gas and Coal Mining* | The establishment of an independent panel to provide advice on coal seam gas proposals and large coal mining proposals. It is proposed to amend the EPBC Act to recognise the existence and role of the panel. |