



Department of **Mines,**
Petroleum and Exploration

DMPE response paper **Mining Rehabilitation Fund** **10-year review**

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Introduction

The Mining Rehabilitation Fund (MRF), as established under the *Mining Rehabilitation Fund Act 2012* (MRF Act), is a pooled industry fund to which Western Australian mining tenement holders contribute. All tenement holders under *Mining Act 1978* (Mining Act) tenure—with the exception of tenements granted or held pursuant to State Agreement Acts—are required to report land disturbance data for the purpose of calculating an annual levy.

Pursuant to section 38(1) of the MRF Act, the Minister for Mines and Petroleum is required to undertake a review of the operation and effectiveness of the MRF Act 10 years from the date of Royal Assent (5 November 2012). Accordingly, in July 2023, the Department of Mines, Petroleum and Exploration (DMPE) (formerly the Department of Energy, Mines, Industry Regulation and Safety) commissioned a legislative review of the operation and effectiveness of the MRF Act.

The statutory review was undertaken by Marsden Jacob Associates in collaboration with DMPE. Marsden Jacob Associates conducted targeted public consultation to inform the findings, recommendations, and holistic analysis of the statutory review. The final report was tabled in Parliament by the Minister for Mines and Petroleum on 18 April 2024.

The report's findings were positive overall, determining that the MRF Act remains effective and is operating as intended, and garnered overall positive feedback from stakeholders. The review identified that the MRF Act continues to function well as a targeted approach to minimising the environmental, social, and financial risk of abandoned mines to the State.

In general, stakeholders were reported as sharing positive views of the MRF Act, including that:

- the objectives, purpose, and function remain relevant;
- the MRF Act remains relevant and effective; and
- in light of this, it does not require wholesale reform.

The report also proposed 16 further recommendations intended to continue to improve the MRF Act's effectiveness into the future. These ideas included smaller or incremental changes seeking to minimise the risk of new abandoned mines, increase the efficiency and effectiveness of the MRF, and increase clarity.

This paper provides DMPE's response to the 10-year review and associated recommendations.

DMPE thanks Marsden Jacob Associates and all stakeholders that contributed to the review.

Response to recommendations

Overall, DMPE supports the majority of the review's recommendations, and considers them a basis for continuous improvement of the MRF Act and its operations.

While the review's recommendations cannot all be implemented in their current form without significant changes to legislation, policies, and guidelines, DMPE intends to work with key stakeholders to progress feasible changes. In doing so, DMPE will undertake stakeholder engagement and consultation before any substantive changes are implemented.

1. **The MRF reporting requirements should be reviewed and should be broadened to include mines operating under State Agreements if this change is found to deliver a net benefit.**

DMPE agrees there is value in extending the MRF Act reporting obligations to tenements granted or held pursuant to State Agreements, however, as alluded to in the statutory review, the practicalities of achieving this outcome are much more nuanced. While each State Agreement is written in its own bespoke terms, many existing State Agreements contain clauses preventing the application of new discriminatory taxes and charges, including the MRF.

This situation was identified during the initial development of the MRF in 2011 with the then-Government determining that the MRF Act would apply to all mining authorisations pursuant to the Mining Act as a starting point. The MRF Act provides for an ability to prescribe State Agreement-related tenements (either specific individual tenements or a class of tenements) in a schedule to the Mining Rehabilitation Fund Regulations 2013 (MRF Regulations) which would formally extend the application of those prescribed State Agreement-related tenements to the requirements of the MRF Act.

In 2015, the then-Government recognised that while tenements granted or held pursuant to State Agreements were exempt from the levy payment obligations of the MRF Act, there would be value in such tenements reporting disturbance-related information on a voluntary basis. Accordingly, tenements granted and held pursuant to State Agreements began reporting mining-disturbance information on an annual basis voluntarily. This reporting is facilitated through the Department of Energy and Economic Diversification (DEED), as the responsible agency for administering State Agreements.

DMPE recognises that there is value and desire to extend the reporting and levy-paying obligations to tenements held pursuant to State Agreements on a formal legislative basis. However, due to the individual terms of each State Agreement, including the prohibition of discriminatory taxes and charges, Government—through DEED—would need to re-negotiate each State Agreement, procure agreement to a variation of each agreement, and secure the passage of a formal legislative amendment in Parliament to facilitate the formal application of the MRF Act.

Making State Agreement tenements subject to the reporting and levy obligations of the MRF Act is one of the core tenets in ‘modernising’ these agreements. In recent years, DEED has been successful in varying certain State Agreements to make their tenements subject to the MRF Act; both the *Nickel (Agnew) Agreement Amendment Act 2023* and the *Iron Ore Agreements Legislation Amendment Act 2024* successfully applied these obligations to the State Agreements that were subject to variation in that legislation. Wherever it is appropriate and, in the State’s best interests to do so, DEED will continue to apply this practice as and when other State Agreements are varied through ratified acts of Parliament.

In response to the discussion contained within the statutory review, DMPE also clarifies that the application of the MRF Act’s reporting and levy-paying obligations do not automatically result in the return or reduction of any mining security required pursuant to the Mining Act. These two obligations (i.e. the operation of the Mining Act and MRF Act) function independently of each other.

2. DMPE should consider the current, or an adapted, program logic in setting measures for reporting short-and medium-term outcomes.

DMPE acknowledges the rationale of this recommendation and will investigate and consider potential options for setting broader or general measures that may assist or improve reporting outcomes.

DMPE agrees there is value in setting measurable criteria for success and reporting against these terms. Further, DMPE reaffirms its commitment to public accountability in its use of collected monies to ensure value for money for works performed and services rendered towards the rehabilitation of prioritised abandoned mine projects. While this recommendation provides that program logic should be considered in setting these measurables or success metrics, DMPE advises that in practice, relevant project objectives and success metrics are established in individual project charters.

Project charters are established for each abandoned mine site that the Abandoned Mines Program seeks to rehabilitate. In developing project charters, DMPE considers the individual circumstances of each abandoned mine feature (e.g. the surrounding environment, potential safety risk, and cultural and heritage considerations) and establishes defined project objectives and success metrics to ensure it is appropriately rehabilitating that abandoned mine feature against those factors. These project charters are endorsed by the Mining Rehabilitation Advisory Panel (MRAP), as an objective independent body, and progress is reported against the project implementation framework at an individual project level.

To supplement this process, each abandoned mine site rehabilitation project's implementation framework is publicly available through wa.gov.au. Further project updates are also provided in the Mining Rehabilitation Fund Yearly report.

This is the established manner by which DMPE formalises project objectives and success metrics and holds itself accountable in alignment with the objectives of the MRF Act. Given that each site has unique characteristics, DMPE asserts that this is an effective mechanism for both setting and reporting against the relevant metrics. Notwithstanding, DMPE recognises the intention underlying this recommendation and is open to exploring the potential for alternative approaches, particularly in the setting of broader or general measures that may assist or improve reporting outcomes.

Potential alternate approaches will be considered as part of a legislative reform package that responds to recommendations from the review; the development of this reform package will commence within the next 6 months. DMPE commits to releasing any ensuing proposed amendment for public consultation.

3. DMPE should identify a rehabilitation profile that represents good practice and then monitor levels of progressive rehabilitation at the industry level against those good practices. If DMPE finds that incentives for progressive rehabilitation need to be strengthened, then it should use a 'carrot and stick' approach to reward mines that achieve or exceed good practice as well as to disincentivise poor practices.

While DMPE recognises the value of increased levels of progressive rehabilitation, it also considers the MRF as just one aspect of an overall framework for achieving this, with the primary purpose of the MRF Act to ensure monetary provision for the rehabilitation of abandoned mine sites. DMPE asserts that, through the MRF, rehabilitation is encouraged through the tiered category unit rates that vary depending on the type and extent of rehabilitation required.

DMPE considers that a standardised best practice for rehabilitation is difficult to apply across the varied Western Australian landscape. 'Good practice' rehabilitation can vary based on a site's operational context, the nature of the disturbance, and its geographic location and is influenced by several environmental factors and variables. Given this, releasing guidelines on a standardised approach for 'good rehabilitation practices' is not practicable and is beyond the scope of the MRF Act.

Currently, progressive rehabilitation is encouraged by DMPE through alternative regulatory routes, primarily through environmental outcomes and compliance with the Mining Act. DMPE uses compliance reviews and site inspections to review sites and ensure progressive rehabilitation is occurring where appropriate, encouraging rehabilitation trials and managing poor closure and rehabilitation practices. Where DMPE identifies an environmental concern, such as closure and environmental outcomes not being met, DMPE may use a range of regulatory tools (in the form of the referred 'stick approach'), including requiring the provision of a mining security (in the form of an unconditional performance bond) or issuing directions pursuant to the Mining Act to yield compliance.

DMPE is also progressing new initiatives with focus on successful closure and rehabilitation of sites, such as the development of the new Mining Development and Closure Proposal (MDCP) framework and the recommencement of the Golden Gecko Awards for Environmental Excellence. The new MDCP framework requires information on mine closure planning to be included at the approvals stage of mining to demonstrate that the proposed activities can meet DMPE's environmental objective for mine closure and rehabilitation. This includes new standardised environmental outcomes and a renewed focus on identifying opportunities for progressive rehabilitation. The Golden Gecko Awards for Environmental Excellence were conceived to recognise leading practice and innovation in environmental management and provide an opportunity to share experiences between government, industry, and the community. By recognising excellence in environmental management, including progressive rehabilitation, the recommencement of this award (after a 2024 review) could be viewed as part of the suggested 'carrot-and-stick' approach.

Overall DMPE is continually considering routes for encouraging and promoting progressive rehabilitation across the state including, but not limited to, a possible role for the MRF in the future. It will take this recommendation into account as part of the development of the suite of potential legislative reforms, which will commence within the next 6 months. DMPE commits to releasing any ensuing proposed amendment for public consultation.

4. DMPE should work with parts of the mining industry operating larger mine sites to identify a more detailed approach to reporting rehabilitation liabilities that is suitable for the largest sites. Once a suitable approach is identified, a tiered reporting approach should be implemented in which more detailed reporting is required for sites with rehabilitation liability estimates (RLEs) greater than a specified value—such as \$1million.

DMPE notes this recommendation, while also considering that tiered reporting may introduce complexities which detract from the core objectives of the MRF Act. Introducing a system of tiered reporting may conflict with the MRF Act's core principles of equity and simplicity, which are the pillars on which the MRF Act reporting process was established and may also increase the administrative and reporting costs of complying with annual reporting obligations as detailed in the statutory review.

DMPE considers that the administrative and cost impact for industry introduced by two tiers of reporting would exceed the benefits. Furthermore, this additional two-tier system would introduce a level of complexity, which may lend itself to greater risks of non-compliance. The statutory review suggests introducing a greater scale of reporting for larger mining operations; however, does not advocate for any such amendment for smaller mining operations, creating a disparity based on size of operation, rather than complexity or risk. Accordingly, DMPE asserts the cost-benefit risk assessment, considering the scope of the factors outlined above, is not straightforward. While DMPE supports the notion underlying the recommendation, the practical nature of implementing such a recommendation has the potential to result in adverse equality, cost, and compliance outcomes.

In lieu of this, work is currently underway by DMPE to ensure adequately detailed information is obtained for managing issues relating to active mine sites. This includes ongoing compliance activities such as annual environmental reporting requirements and site inspections, pursuant to the Mining Act, which allows DMPE to actively monitor environmental management, and progression of rehabilitation and closure activities. Additionally, information requirements for mining approvals will be increased through the implementation of the new MDCP framework and supplementary guidelines, improving both the quality and detail of environmental data and site information provided to DMPE. The forthcoming commencement of DMPE's new Resources Online system, will also result in greater information and intelligence available across the department to support its compliance monitoring activities. Furthermore, an updated Mine Closure Plan (MCP) guideline will be released to support the new MDCP framework, which outlines the requirements for more detailed closure cost estimates to be provided. This ensures DMPE has greater oversight in tracking potential rehabilitation liabilities and provides tenement holders with greater guidance and awareness of their closure and rehabilitation obligations, thereby supporting the key objectives of the MRF Act.

Notwithstanding, the benefits of a tiered reporting system will continue to be considered in light of the MRF Act's effectiveness over time. At this stage, DMPE does not consider it a high priority in the context of other potential amendments.

5. The RLE categories should be reviewed regularly to ensure that they reflect the range of modern mining activities

DMPE supports recommendation 5 and commits to reviewing the RLE categories to ensure that they are representative of contemporary mining activities.

DMPE clarifies that the objective of the RLE categories is not to identify each kind of mining activity, but rather to ensure all mining activities are able to fall within the scope of the broad-ranging categories for the purpose of calculating a levy. Accordingly, it may be prudent to update or prepare additional guidance material to ensure stakeholders are aware of the relevant RLE categories to utilise when complying with their annual reporting obligations.

The RLE categories provided for in Schedule 1 to the MRF Regulations were last amended in 2021 to account for operations associated with the emerging minerals-in-brine operations. Notwithstanding, DMPE recognises that the RLE categories have not been holistically expanded to account for new and emerging mining activities. DMPE acknowledges the general stakeholder view that the RLE categories ought to be reviewed and agrees that certain unusual mining activities may be more appropriately represented in a bespoke category, e.g. outliers such as seawalls. While there may be a need for greater recognition of the range of mining activities to ensure they are appropriately represented in the available categories, this may not need to extend to individually identifying each activity, e.g. the examples provided within the statutory review (batteries, wind farms, solar farms, and power transmission) could be captured within a discrete RLE category.

As a first step, DMPE will review the existing RLE categories to determine which activities (both existing and proposed) appropriately fit within the existing categories and then identify which activities may need further clarification. Following that, DMPE will determine whether any new categories are needed to account for any outliers, anomalies, or activities that are otherwise not adequately addressed. In undertaking this review, DMPE will need to be mindful of the potential impact of the forthcoming changes arising from the new MDCP framework through the commencement of the *Mining Amendment Act 2022*.

This matter will be progressed together with actions to address recommendation 6 and as part of a suite of potential legislative reforms to the MRF Regulations. This work will commence within the next 6 months, with an intention to be implemented following legislative amendments to the MRF Act. DMPE commits to releasing any ensuing proposed amendment for public consultation.

6. It is recommended that:

- **the RLE values be updated (after the categories have been reviewed);**
- **the RLE values be reviewed on a regular basis (for example, every five years, depending on advice from the Treasury); and**
- **the RLE values be indexed against a measure of inflation to minimise the drift between the RLE values and the true cost of rehabilitation between reviews.**

DMPE acknowledges recommendation 6 and will consider options for reviewing and indexing the RLE values over time.

DMPE clarifies that, while unit rates have been derived from average costs, these values were not (and are not) intended to be an ongoing representation of actual or approximate costs in undertaking the mining activity or addressing environmental liability.

Notwithstanding this, DMPE recognises that there has been considerable inflationary pressure experienced on a global scale in the time since the commencement of the MRF Act. This has multiple flow-on effects, including impeding the MRF Act's effectiveness as a tool to encourage progressive rehabilitation and, in the face of increased costs, potentially undermining the level of assurance that the MRF provides to fund the rehabilitation of abandoned mine sites. It also adversely affects the level of investment income generated by the MRF, which places pressure on the funding available for the work undertaken by the Abandoned Mines Program (AMP) in mediating the risks of legacy abandoned mine sites.

DMPE acknowledges recommendation 6 and supports undertaking a holistic review of the RLE values, including ensuring that they reflect contemporary settings and rehabilitation liability, and considering potential models for aligning the RLE values with changes in the economy on an ongoing basis, such as linking the value to changes in the Consumer Price Index (CPI). There are several different approaches that could be taken to revise the RLE categories and/or the value (or calculation) of the unit rates and their alignment with contemporary costs. DMPE commits to reviewing the formulation of the RLE categories and unit rates to ensure that they are clear and fit-for-purpose and that they align with stakeholder expectations.

Work to address this recommendation will be undertaken in conjunction with work to address recommendation 5, as part of a suite of potential legislative reforms to the MRF Regulations. This work will commence within the next 6 months, with an intention to be implemented following legislative amendments to the MRF Act. DMPE commits to releasing any ensuing proposed amendment for public consultation.

7. While one per cent is an appropriate contribution rate, it should be reviewed on a regular basis.

DMPE acknowledges the discussion within the statutory review, as well as the final recommendation, that the existing contribution rate of one per cent is appropriate at the current time.

Neither the contribution rate, the category unit rates, or the previous mining security (unconditional performance bond) approach were implemented to cover the true cost of rehabilitating abandoned mine sites. Rather, the purpose of the contribution rate is to serve as a financial assurance mechanism to encourage industry to meet their environment obligations, to progressively rehabilitate disturbed land, and to ensure there is adequate funding to address any mine abandonment. It is that latter component that is the critical threshold criterion in provisioning for the availability of monies held within the fund.

The statutory review states that setting the contribution rate requires an estimation of the proportion of mines that will become abandoned and uses the example of setting an insurance premium, to ensure that the risk does not outweigh the liability, as a similar conceptual approach. DMPE notes that the statutory review establishes that stakeholders generally agree that the existing one per cent contribution rate is appropriate. DMPE also observes that, in the ten years since the commencement of the MRF Act, there has been a marked increase in awareness, amongst both corporate and non-corporate stakeholders, of the value of environmental, social, and governance standards (social licence to operate); over the same period, however, there has not been an exponential growth in the number of mine sites that have become abandoned.

Notwithstanding this, increasing global inflationary pressures, economic uncertainty and volatility (as well as lessons learnt from the COVID-19 pandemic) indicate that DMPE is acutely aware of the need to remain vigilant and to be prepared to address any potential mine site abandonment scenario that may materialise. This extends to ensuring that there is a sufficient level of funds within the MRF (both from levy collection and from interest generated). Regulatory controls (either existing or future) can never completely eliminate the risk of mine site abandonment, but that risk may be mitigated with sufficient foresight. Accordingly, DMPE commits to reviewing the appropriateness of the one per cent contribution rate in line with other strategies to ensure that the amount of levies collected is in line with the operation and intent of the MRF Act. As foreshadowed in the statutory review, this is a component that requires ongoing re-assessment as the nature of the mining industry, and the physical and economic environment in which it operates, shifts over time and will require the establishing of set criteria to determine whether a change in contribution rate is required.

DMPE notes that this recommendation is linked in nature to recommendations 5 and 6 as well as recommendation 9. Accordingly, any review into the contribution rate will be undertaken as part of a broader review into the MRF Act, including the RLE estimates and will be progressed as part of a suite of legislative reforms to the MRF Regulations. This work will commence within the next 6 months, with an intention to be implemented following legislative amendments to the MRF Act. DMPE commits to releasing any ensuing proposed amendment for public consultation.

8. DMPE should investigate the possibility of reducing or increasing the contribution rate of projects based on risk assessments undertaken by the department using agreed criteria.

DMPE acknowledges recommendation 8 and commits to reviewing the potential for an adjustment of the contribution rate for individual projects based on risk assessments, in line with other strategies.

DMPE notes that a risk-based approach to establishing the levy payable for individual projects could be an effective incentive for greater compliance and progressive rehabilitation, as well as increased effort in planning and budgeting and review for closure and rehabilitation.

While the merits of this recommendation are not disputed, DMPE asserts that a higher risk of a mine becoming abandoned is demonstrably not the same as a mine representing higher environmental risk (that is, the risk of a serious environmental incident). More often than not, operations close and become abandoned through financial concerns, rather than environmental concerns. Additionally, a higher level of land disturbance does not necessarily correlate to higher environmental risk, greater financial risk, or a greater risk of mine abandonment.

The overall success of this recommendation would be based upon the relevancy and reliability of any established criteria used in a risk assessment. There are varied options for developing such criteria and such criteria must be clear, measurable, objective, and achievable. Ultimately, any increase in applicable contribution rate would need to correlate with the risk of the tenement holder not being able (or willing) to meet its mine closure and rehabilitation obligations and/or the risk of mine abandonment.

DMPE acknowledges such an approach would create an incentive for tenement holders to actively address any identified risk factors or proactively rehabilitate in a concerted effort to lower the applicable contribution rate. While there are benefits in progressing with this approach, DMPE notes that the overall positive outcomes of a revised approach may be constrained by the annual reporting and levy cycle established in the MRF Act. That is, there would be a likely timing difference between the periodic information on which a rate was based and the period to which it was ultimately applied. Furthermore, the introduction of an alternative model for establishing the amount of levy that must be paid based upon a risk assessment is subjective in nature, may change sporadically or suddenly, would not provide a tenement holder with a level of certainty, and would limit DMPE's ability to budget and forecast incoming annual levy. Alternatively, a two-tier system for determining the appropriate contribution rate would lend itself to the same limitations and risks outlined in the response to recommendation 4 in that such an approach has the potential to result in adverse equality, cost, and compliance outcomes. DMPE will consider this recommendation, alongside all relevant factors, in line with its overall consideration of the recommendations arising from the statutory review.

9. If the RLE rates are revised, then the contribution threshold should also be reviewed. It appears appropriate to maintain the proportion of tenements that contribute financially to the MRF.

DMPE notes this recommendation and will consider options for reviewing the contribution threshold over time, and in line with any revisions to the RLE unit rates that are deemed appropriate.

DMPE recognises that it is important to continually review all aspects of the MRF Act to ensure that it continues to meet its objectives and is fit for purpose in a contemporary setting. Accordingly, DMPE agrees that it is appropriate to review the contribution threshold.

DMPE also recognises that any revision to the unit rates, as outlined in recommendation 6, would also warrant a review of the contribution threshold. In this setting, DMPE considers that it would be prudent for any adjustment to the unit rates to be extended to the contribution threshold in the same manner e.g. CPI adjustment. This matter will be progressed as part of a suite of reforms to the MRF Regulations, development of which will commence within the next 6 months, with an intention to be implemented following legislative amendments to the MRF Act. DMPE commits to releasing any ensuing proposed amendment for public consultation.

10. Section 8 of the MRF Act should be amended to enable flexibility with drawing from the fund, for example, to allow funds to be borrowed from the fund's principal in times of low interest rates—subject to some constraints, such as limits on the duration of the loan and the total value that could be borrowed.

As established in section 8(2) of the MRF Act, interest generated from principal monies in the MRF (referred to as 'investment income' in the MRF Act) are used to fund the rehabilitation of abandoned mine sites that have not previously participated in the MRF (i.e. historical or legacy abandoned mine sites). They are also used to fund the costs of administering the Act, including the wages and salaries of those employed in its administration. As of 30 June 2025, the MRF has a total balance of \$356.3 million including \$23.3 million in net interest. Interest generated from principal monies in the MRF are subject to fluctuations owing to global economic conditions that are not controllable, and based on recent times, may be best classified as uncertain.

As experienced during the COVID-19 pandemic, interest generated from the fund's principal may stagnate and even fall as low as zero per cent, effectively neutralising the growth of monies derived from interest that would be used to fund the rehabilitation of historical abandoned mine sites and the Act's general administration. While the COVID-19 pandemic has passed, there is still the potential for interest generated from principal MRF monies to stagnate and fall, particularly with present-day volatile or uncertain market conditions.

The state's responsibility to rehabilitate abandoned mine sites is on-going, despite the potential constraints that a period of low (or zero) interest rates might place on the availability of funds for that purpose. There will always be an inherent and significant disparity between the balance of interest-generated monies and the balance of principal funds, and thus an inherent limitation in the capacity to rehabilitate historical abandoned mine sites. In periods of economic volatility or negative growth, there would presumably still be monies available in the MRF to continue rehabilitation works in the short-term period, however if such an economic situation is sustained for a prolonged period, this funding would inevitably become strained and eventually depleted; a

situation that would significantly impact and reduce the state's ability to plan for and undertake future rehabilitation works on historical abandoned mine sites.

The impact of these conditions can be mitigated, in part, by thorough planning, conservative budgeting, and the setting of a robust buffer between funds committed for expenditure and funds held in reserve. No amount of robust planning, however, will be sufficient to withstand a sustained period of challenging economic conditions. In this sense, DMPE supports the notion of having greater flexibility in accessing monies held in the fund, whether they be principal monies or interest generated from the principal monies, to rehabilitate abandoned mine sites.

Recommendation 10 provides one example of a potential mechanism for achieving greater flexibility to draw from the fund. This proposal could be enhanced by establishing clear conditions under which monies could be advanced from the fund's principal to fund the rehabilitation of historical abandoned mine sites. Such conditions might include a demonstrated funding shortfall due the adverse economic conditions or where it is otherwise in the public interest to do so. DMPE acknowledges the merits of this proposal but notes that there is an array of alternative mechanisms for achieving this result, such as obtaining Treasury Advances or by removing the MRF Act's restrictions governing the use of principal monies and investment income.

Potential models will be considered and developed as part of a suite of reforms to the MRF Act. Development work will commence within the next 6 months, with an intention to be released for public consultation ahead of the commencement of the 2026–27 financial year.

11. The MRF Act should be amended to require a further review on the 20-year anniversary of the commencement of the legislation.

DMPE supports this recommendation and is open to undertaking periodic reviews and objective evaluation of the operation and effectiveness of the MRF. Undertaking continuous review provides DMPE with the ability for continuous improvement and to be able to respond to shifts in industry, environmental or economic factors.

DMPE notes that it is unusual for an Act of Parliament to be amended to establish a second requirement to undertake a statutory review. Notwithstanding, DMPE endorses a second review of the MRF Act, whether it be in the form of a legislated 20-year statutory review, periodic operational reviews, or targeted reviews on specific matters and will investigate suitable pathways for implementing this action.

DMPE considers ongoing evaluation to be critical in responding to changed and unforeseen circumstances that may adversely affect the functioning of the MRF over time. DMPE commits to undertaking periodic reviews of the operation and effectiveness of the MRF Act as and when opportunities arise, independent of any prospective requirement to undertake a further statutory review.

12. The role of the MRAP should be reviewed. Any proposed changes to the relevant sections of the regulations should be consulted upon broadly with industry.

DMPE notes that MRAP serves a very specific function, as prescribed by the terms of the MRF Act, and that function has been carried out to DMPE's satisfaction.

The functions, as outlined in section 33(3) of the MRF Act and regulation 9 of the MRF Regulations, include providing advice in relation to the MRF, legacy sites, and rehabilitation priorities as well as any other matter relating to the administration of the Act in which it is requested to do so.

With reference to the statutory functions as provided by the MRF Act and MRF Regulations, DMPE considers that MRAP has a well-defined and broad scope, and it is currently fulfilling its duties. Notwithstanding, DMPE will consider undertaking a review in the future, in line with DMPE's ongoing processes to identify potential enhancements to the MRF Act. Any potential changes would be first informed by consultation with relevant stakeholders.

13. The proposed extension of the two-year limit set out in section 19 of the MRF Act should be included in a suite of possible reforms which should be consulted upon broadly.

DMPE supports this recommendation and is committed to developing a proposed legislative amendment for public consultation.

The two-year limitation for reassessments established within the MRF Act has, in practice, constrained DMPE's ability to undertake and/or complete reassessments, particularly when the reassessments are prompted by the identification of past reporting errors close to the expiry of the two-year period.

DMPE agrees that a general limitation is appropriate to provide a standard level of certainty to the ordinary function of the MRF. Notwithstanding, DMPE seeks to explore opportunities to provide for an ability to vary or extend this period where there are reasonable grounds for doing so (which is the standard that the MRF Act imposes on extensions of the objection period provided in section 20). This would provide DMPE with additional time to complete a review that is already underway but yet to be finalised and would also allow DMPE to extend reviews beyond the two-year limit to investigate and/or remediate errors over successive periods. This would also be of potential benefit to tenement holders, in providing an ability to extend the reassessment period where there are reasonable grounds.

DMPE intends to explore opportunities to develop a potential legislative amendment and will ensure that any potential amendment is released for public consultation.

This initiative will be progressed as part of a suite of reforms to the MRF Act. Development work will commence within the next 6 months, with an intention to be implemented in readiness for the commencement of the 2026/27 financial year following a public consultation process.

14. DMPE should define the standard that the AMP seeks to return sites to. That definition should be set out in a guidance document that is periodically reviewed and updated, for example, every five years.

DMPE agrees there is value in defining, in broad terms, what constitutes the 'rehabilitation of an abandoned mine site' for the purposes of establishing guidance for the operation of the AMP. This extends to broadly defining the range of activities that may be undertaken towards rehabilitating an abandoned mine site and articulating the relevant factors to be considered when identifying what rehabilitation work may be required.

While DMPE acknowledges the merit and public value presented in this recommendation, it asserts that establishing defined or standardised criteria for rehabilitation is not practical given the wide variability in the factors affecting mine sites across Western Australia (including geological, environmental, cultural, and heritage issues). Good practice and appropriate rehabilitation will vary on a case-by-case basis and is dependent upon a site's operational context, the nature of the disturbance, and its geographic location. This rationale is best represented by the requirement of each mining operation to develop and obtain approval of an individual MCP reflective of the unique context and circumstances of that particular operation. Accordingly, DMPE is of the view that it is not practical to establish a standardised approach for good rehabilitation practices.

In practical and operational terms, a project charter is developed for each abandoned mine project undertaken by the AMP. The project charter considers the unique context and circumstances surrounding that individual abandoned mine site and establishes tailored project objectives and success metrics to address those relevant factors. These project charters are endorsed by the MRAP and progress is reported against the project implementation framework at an individual project level. Each project implementation framework is publicly available on the wa.gov.au website with progress updates provided in the Mining Rehabilitation Fund Yearly report. In this manner, project planning is able to address the unique circumstances or risk factors present within each individual abandoned mine site and maintain the accountability of the AMP on an individual project basis.

As outlined above, DMPE supports the need to provide additional clarity to guide the operation of the AMP and to establish a model for expected rehabilitation outcomes. In recognition of this recommendation, DMPE will be releasing a revised Abandoned Mines policy for public consultation in 2025. The revised policy will provide a broad definition of what constitutes the rehabilitation of an abandoned mine site, including the subset of rehabilitation activities and the factors that are considered when determining the appropriate rehabilitation activities for individual sites. DMPE will invite stakeholders to consider the contents of the revised policy and provide feedback when it is released for consultation.

15. DMPE has identified a range of reforms that seek to clarify the AMP's powers. They include clarifying and broadening the definition of 'rehabilitation works', restricting site entry, and obtaining data and reports for abandoned mines. These reforms should be clearly defined and consulted upon with industry, with a view to implementing legislative reforms.

As provided in this recommendation, with the benefit of ten years of operation in applying the MRF Act to rehabilitate abandoned mine sites, DMPE has identified a number of potential legislative amendments that would assist in performing the functions within its AMP. Some examples of these proposals include the following:

Clarifying and establishing what activities are permitted to be undertaken to rehabilitate an abandoned mine site: DMPE considers there is a wide array of work that may be undertaken to rehabilitate an abandoned mine site. This includes physical on-site works such as deconstruction, waste recycling and removal, remedial and rehabilitation earthworks, and revegetation, as well as the preceding work to inform the eventual rehabilitation strategy, including site studies, assessments, designs, and specialist consultant costs. Additionally, supporting work, such as road re-establishment and maintenance, maintenance earthworks on constructed landforms, camp/accommodation facilities, and office/messing facilities are integral and fall within the scope of rehabilitation works. Other works, such as fencing and gating, security, warning signage, and geotechnical inspections may also be essential elements in the rehabilitation of the site and in line with stakeholder expectations.

The anomaly here is that there is no definition of 'rehabilitation' established within the MRF Act, nor is there any specification as to what tasks or activities may be funded from the MRF. In a traditional sense, it could be argued that 'rehabilitation works' are limited to the first category of works outlined above (physical on-ground works), however DMPE is of the view that rehabilitation works include the full scale of the activities outlined above in that they are a part of, or, assist in rehabilitation, including the initial step of maintaining the safety of the site to prevent further impact. With this in mind, DMPE seeks to clarify the types of activities that constitute 'rehabilitation works' that may be funded through the MRF.

Ensuring the power to enter an abandoned mine site is not reliant upon the expenditure of monies from the MRF: Section 10 of the MRF Act establishes a power to enter an abandoned mine site and affected land for rehabilitation work. Rehabilitation work is then defined as 'work to rehabilitate an abandoned mine site or affected land that is funded from money standing to the credit of the fund'. DMPE asserts that not all work needs to be funded by the MRF. Some rehabilitation work (e.g. salvage and deconstruction), in the right circumstances, may be cost neutral or return a profit. In these circumstances, the power to enter established in section 10 is not available as this rehabilitation work is not funded by money standing to the credit of the fund. DMPE seeks to ensure the power to enter is not unnecessarily constrained and is available to undertake rehabilitation work regardless of the source of funding. There are a variety of options to achieve this objective, such as modifying the existing term 'rehabilitation work' to a term or definition that encompasses work that assists rehabilitation, or assists in ensuring the site is safe, stable and non-polluting or removing the requirement that the power to enter is linked to the expenditure of MRF monies.

Expanding the CEO's powers to require information and records to include information and records relating to an abandoned mine site: Section 29 of the MRF Act empowers the CEO to direct a person to provide information and produce records for the purposes of calculating an appropriate levy. This power is not extended to requiring information and records for the purposes of informing an appropriate rehabilitation strategy. DMPE suggests that, when a mine site becomes abandoned, it is also likely that the (former) tenement holder has entered into administration, has been liquidated, or deregistered as a company. In this situation, the relevant suite of data, records, and cache of operational and environmental reports are lost, meaning information that would be valuable in formulating a rehabilitation strategy is not available.

MCPs submitted to DMPE do not contain all raw data and studies that inform the mining, environmental, and rehabilitation strategy, with key sources of information often cited and summarised. These studies are typically undertaken by specialist, third-party consultants who continue to hold these records. In the absence of a direction from their former client, these third parties may be hesitant to release the relevant reports. DMPE asserts these records are critical to obtaining an understanding of all rehabilitation options available to a specific site and seeks to expand the application of section 29 to obtaining information and records relating to an abandoned mine site.

The proposals outlined above have been identified through anomalies or inefficiencies in the course of applying the terms set out in the MRF Act to rehabilitate abandoned mine sites. The common theme through these examples is a need to enhance the practical nature of the MRF Act to permit greater efficiency in performing its functions in line with the objectives of the AMP, stakeholder expectations, and site-specific risk factors.

Through the ensuing work following this statutory review, DMPE endeavours to develop legislative or regulatory amendments that will enhance the operation and effectiveness of the MRF Act and the Abandoned Mines Program. DMPE is committed to exploring and developing practical and clear amendments in line with the public interest and commits to consulting with stakeholders on any substantive amendments to ensure they are fit-for-purpose. The identified reforms will be progressed as part of a suite of reforms to the MRF Act, development of which will commence within the next 6 months, with an intention to be implemented in readiness for the commencement of the 2026–27 financial year. DMPE commits to releasing any ensuing proposed amendments for public consultation.

16. DMPE should consider the process and system changes proposed to ease the reporting burden and consider whether system and process changes would be beneficial.

DMPE acknowledges and agrees in principle with this recommendation. DMPE is committed to continuous business and system enhancements to streamline the administration of the MRF and is actively considering various process improvements in line with other strategies.

The statutory review discusses proposals to create efficiencies, reduce costs and harmonise reporting requirements. DMPE advises that a number of enhancements have already been introduced, and more are planned that would largely address the matters raised within the statutory review. Additional matters raised (such as aligning MRF and Annual Environmental Report reporting categories) relate, in part, to the operation of the Mining Act and would be complicated with the forthcoming commencement of the MDCP framework arising from the *Mining Amendment Act 2022*.

DMPE is committed to pursuing continuous system enhancements, where possible and practicable, to streamline the administration of the MRF reporting requirements and supports recommendation 16.

Further process and system changes, not requiring legislative amendments, will be progressed on an ongoing basis, independent of the suite of legislative reform initiatives.

Conclusion

DMPE is committed to the ongoing improvement of the MRF and endeavours to continually review and implement administrative, operational, policy, and statutory amendments to ensure the continued effective operation of the MRF Act.

DMPE will continue to work with relevant stakeholders to progress the supported recommendations arising from the statutory review and it commits to undertaking stakeholder consultation to develop any ensuing amendments.

DMPE will provide further updates as the development of individual items are progressed and invites stakeholders to contribute and provide feedback at the appropriate opportunity.

Government of Western Australia

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8.30am – 4.30pm

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