GOVERNMENT OF WESTERN AUSTRALIA

Department of **Mines, Petroleum and Exploration**

Discussion paper

Proposed legislative amendments to the *Mining Rehabilitation Fund Act 2012*

Addressing the recommendations of the 10-year statutory review





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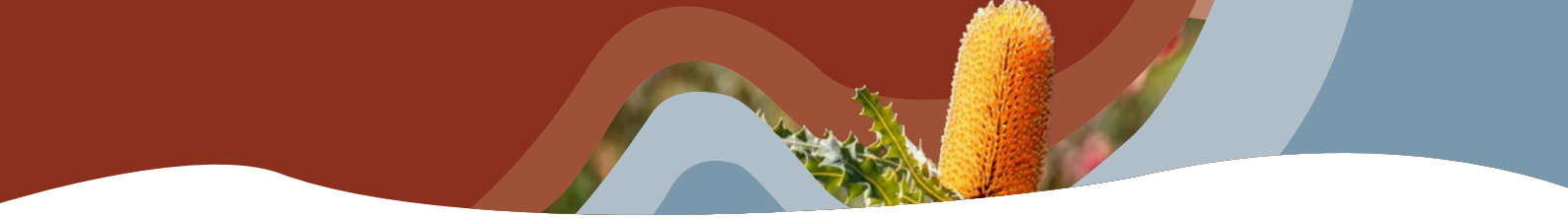
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Executive summary

Section 38 of the *Mining Rehabilitation Fund Act 2012* (MRF Act) established that a statutory review of the operation and effectiveness of the MRF Act was required to be undertaken 10 years after the date upon which the MRF Act received Royal Assent.

On 18 April 2024, the 10-year statutory review of the MRF Act was tabled in Parliament. The review found that the MRF Act was operating well and did not require wholesale amendments. The statutory review put forward 16 recommendations to enhance the operation of the MRF Act.

This discussion paper is comprised of eight proposed legislative amendments to the MRF Act, across five broader topics, put forward by the Department of Mines, Petroleum and Exploration (DMPE) to address the corresponding recommendations of the statutory review as set out below.

Recommendation 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.

DMPE proposed response to Recommendation 10:

To account for periods of strain on the MRF such as a negative economic event, extended period of low interest rate earnings or another unforeseen extraordinary event, DMPE proposes to amend the MRF Act to enable the Chief Executive Officer (CEO) of DMPE to authorise, at their discretion, the expenditure of principal monies (up to 20 per cent of principal monies received in the previous reporting period) to be used for the purposes of section 8(2)(a) through to (d) of the MRF Act.

Recommendation 11:

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

DMPE proposed response to Recommendation 11:

DMPE proposes to amend the MRF Act to require a further 10-year statutory review to be undertaken. As a matter of practicality, to allow for sufficient time to evaluate the effectiveness and operation of the proposed legislative amendments arising from the initial statutory review as outlined in this discussion paper, the subsequent statutory review will be set at 10 years from when the ensuing legislative amendments receive Royal Assent.

Recommendation 13:

The proposed extension of the two-year limit set out in section 18 of the MRF Act should be included in a suite of possible reforms which should be consulted upon broadly.

DMPE proposed response to Recommendation 13:

DMPE proposes to amend section 18 of the MRF Act to:

a. Remove the existing timing component in which to finalise a reassessment, thereby allowing initiated reassessments to continue to progress.



b. Empower the CEO to commence a reassessment of a levy amount up to five years from when the original assessment was made, in order to capture systemic misreporting that would otherwise result in the underpayment of levy as well as accidental overreporting that would otherwise result in the overpayment of levy.

Recommendation 15:

DMPE has identified a range of reforms that seek to clarify the Abandoned Mine Program (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.

DMPE proposed response to Recommendation 15:

DMPE proposes to:

a. Broaden the language used in sections 8(1) and (2) of the MRF Act to describe the range of activities that are eligible to receive MRF funding to include activities that are ancillary to, support, enable and facilitate rehabilitation, to ensure the full range of required activities to rehabilitate an abandoned mine site are able to be funded from the MRF.

b. Amend the definition of 'rehabilitation work' in section 10 of the MRF Act to remove the requirement for the expenditure of MRF monies, thereby allowing authorised personnel to enter an abandoned mine site without having a requirement to spend MRF monies.

c. Replicate or extend the existing direction power of the CEO in sections 29, 30 and 31 of the MRF Act to require the provision reports and data to inform the rehabilitation of an abandoned mine site.

Recommendation 16:

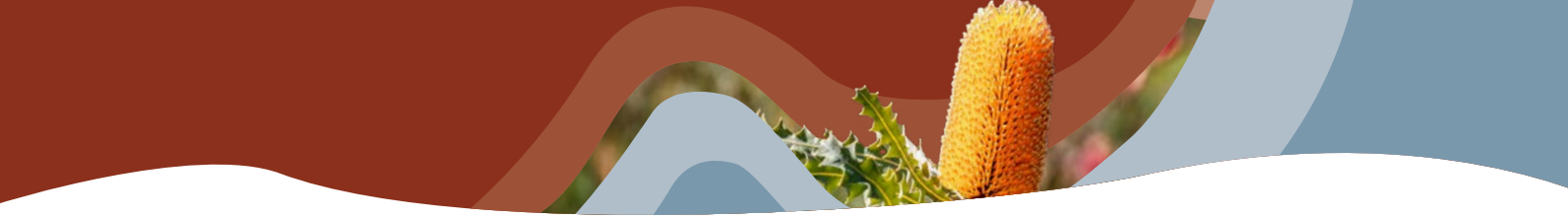
DMPE should consider the process and system changes proposed to ease the reporting burden and consider whether system and process changes would be beneficial.

DMPE proposed response to Recommendation 16:

DMPE proposes to amend section 37A of the MRF Act to allow joint holders of a mining authorisation to nominate a single party as the nominated party for the receipt of notices rather than simply allowing parties to nominate an address for the service of notices as currently permitted.

Further details of each proposed legislative amendment are set out in the body of this discussion paper. DMPE invites stakeholders to consider the suite of proposed amendments and provide feedback to further refine the proposals before they are put to Government for consideration. Stakeholders may also submit alternative proposals that achieve the same or similar policy intent and address the recommendations of the statutory review.

The proposals contained within this discussion paper will be open and available for public consultation for 12 weeks in total, closing on the date specified on the Have your say consultation page on WA.gov. During this time, interested stakeholders may lodge submissions via REC.Consultation@dmpe.wa.gov.au.



Purpose

This document proposes eight potential legislative amendments developed by DMPE that seek to address the recommendations of the 10-year statutory review of the MRF Act, which are provided for public comment.

During the 12-week consultation period beginning in November 2026, stakeholders are invited to consider the suite of proposals and share their views on the suitability of each proposal, and/or put forward alternative proposals that ought to be considered to achieve the intent of the corresponding recommendation from the statutory review. Submissions may be lodged at REC.Consultation@dmpe.wa.gov.au. DMPE welcomes all stakeholder contributions to develop the ensuing legislative amendments to the MRF Act.

DMPE will consider each stakeholder submission received on its merits to further refine the prospective legislative amendments. A collective response to submissions document will be prepared which will provide a response to each individual submission received on this paper. To facilitate this process, submissions will be published verbatim, with the submitter identified.

Please note, personal information will be collected by DMPE through submissions lodged to prepare the response to submissions document. Submitters will be listed alongside their respective comments. Individual contact information will not be published and collected personal information will not be used for any other purpose.

Objective

To provide an opportunity for stakeholders to consider the suite of proposed amendments, participate and contribute towards the development of legislative amendments to address the recommendations of the 10-year statutory review of the MRF Act.

Scope

The scope of this paper is limited to proposed legislative amendments to the MRF Act to address the recommendations of the 10-year statutory review. This discussion paper does not contain any proposed amendments to the Mining Rehabilitation Fund Regulations 2013 (MRF Regulations) to address those recommendations that relate to the MRF Regulations.

DMPE intends to prepare and release a secondary discussion paper relating to the potential legislative amendments to the MRF Regulations. That secondary discussion paper will be prepared and released in a separate process following the conclusion of this stakeholder consultation process for proposed amendments to the MRF Act.

This discussion paper is limited to matters that are regulated pursuant to the MRF Act. It does not contain any proposed legislative amendments relating to the regulation of mining operations which ordinarily occur by way of the *Mining Act 1978*, nor the regulation of mining-related State Agreement projects, which are separately administered by the Department of Energy and Economic Diversification (DEED), pursuant to individual State Agreement Acts[1].

1 DEED's approach to varying State Agreements Acts, by making the incorporation of the reporting and levy-paying obligations of the MRF Act one of the core tenets of modernising existing agreements, was previously outlined in DMPE's response to the statutory review



Introduction

A brief history of the MRF Act: origins and objectives

On 15 August 2012, the Mining Rehabilitation Fund Bill 2012 (MRF Bill) was introduced in State Parliament. The MRF Bill marked a shift in the State's approach to mitigate the exposure to financial liability arising from mine abandonment through the establishment of the MRF as a dedicated fund to address mine site rehabilitation.

The MRF Bill proposed to require mining authorisation holders (mining tenement holders pursuant to the *Mining Act 1978* and prescribed State Agreement Act holders) to report land disturbance information on an annual basis, for which a levy would be applied commensurate with the level of disturbed land. These annual levy payments would then provide ongoing sustained financial contributions to the MRF, allowing it to grow over time. The CEO of the department would be empowered to declare land to be an abandoned mine site and enable authorised personnel to undertake rehabilitation works utilising monies from the MRF.

The MRF Bill secured passage through Parliament with bipartisan support and on 5 November 2012 received Royal Assent from the then-Governor, thereby becoming the *Mining Rehabilitation Fund Act 2012* (MRF Act). The MRF Act is supported by the MRF Regulations, which together commenced operation on a voluntary opt-in basis on 1 July 2013 before the Mining Rehabilitation Fund (MRF) levy became compulsory on 1 July 2014.

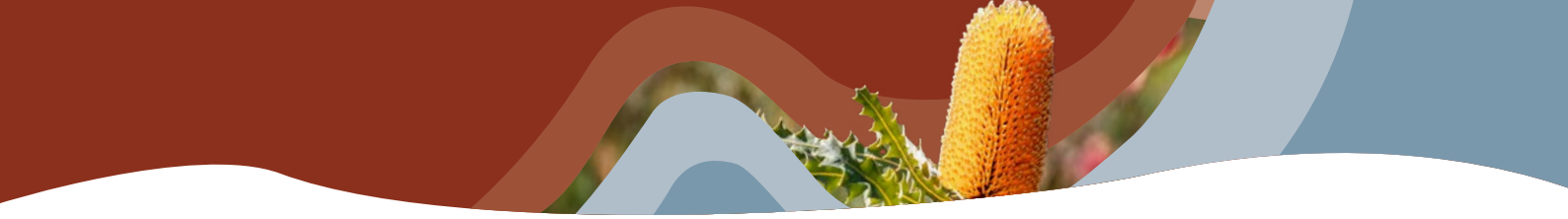
The MRF in contemporary settings

As at 30 September 2026, the MRF has grown to a total balance of $432.3 million including $36.6 million in net interest. Collected monies are utilised by the AMP for the rehabilitation of abandoned mine sites and other land affected by mining operations carried out in, on or under those sites. Today, the MRF Act serves as the State's primary financial assurance mechanism to fund the rehabilitation of abandoned mine sites, with the MRF supporting ongoing rehabilitation of the abandoned Ellendale Diamond Mine to achieve a safe, stable and non-polluting outcome, as well as initiatives such as the Safer Shafts for Towns project that is focused on addressing public safety risks associated with abandoned mine features across Western Australia.

Statutory review

In the course of the Parliamentary debate, Parliament determined that it would be prudent to establish a future opportunity to review the operation of the legislation as a whole. A period of 10 years was selected as the appropriate timeframe to undertake a review and this statutory review requirement was formally established as section 38 of the MRF Act.

In accordance with the requirements of section 38 of the MRF Act, a statutory review of the MRF Act was tabled in Parliament on 18 April 2024 providing a series of recommendations to enhance the MRF Act. On 30 October 2025, DMPE published a departmental response to the statutory review. The suite of proposed legislative amendments within this discussion paper represents the natural progression of this process; to develop targeted legislative amendments to the MRF Act to address those recommendations.



Legislative context

As outlined above, during the debate of the MRF Bill, Parliament sought to include an entrenched review mechanism to provide a future iteration of Parliament with an opportunity to review the operation of the MRF Act and MRF Regulations with the benefit of 10 years of operation. Amongst other things, this was considered warranted given the unpredictable nature of the financial performance of the MRF over an extended timeframe.

As a result, section 38(1) of the MRF Act introduced a requirement for the Minister responsible for administering the MRF Act to undertake a review of the operation and effectiveness of the MRF Act 10 years from the date of Royal Assent. Further, section 38(2) of the MRF Act required the Minister to table the review of the MRF Act in Parliament no later than 18 months after 10 years from the date of Royal Assent.

Marsden Jacob Associates (MJA) was commissioned to undertake the statutory review in collaboration with DMPE. MJA undertook targeted consultation with stakeholders to inform its findings and recommendations. The statutory review was tabled in Parliament on 18 April 2024. The statutory review was positive and observed that stakeholders agreed the MRF Act is effective, functioning well, meeting its objectives and supported by stakeholders. The review concluded that the MRF Act does not require wholesale reform; however, 16 recommendations were proposed to enhance its operation.

Since the commencement of the MRF Act the legislative framework has only been substantively amended once, in 2021, through amendments to the MRF Regulations to account for minerals-in-brine operations. This legislative review process presents a unique opportunity to holistically review the operation of the MRF Act and develop targeted legislative amendments to enhance its operation and utility.

Proposed legislative amendments to the *Mining Rehabilitation Fund Act 2012* (MRF Act)

Since the finalisation of the departmental response to the statutory review, DMPE has investigated potential legislative amendments to achieve the intent of the recommendations. DMPE holds the view that is not appropriate for the department to address each recommendation with a legislative amendment. For example, Recommendation 1 relates to the regulation of State Agreement Acts for which DEED is the responsible regulatory entity. Elsewhere, recommendations put forward conflicted with the objectives and principles of the MRF Act, while it was neither practical nor within the scope of the MRF Act to address other recommendations (such as Recommendation 2). DMPE's position on each recommendation is documented within the aforementioned departmental response to the statutory review.

As stated above, a suite of potential legislative amendments to the MRF Regulations will be released for public consultation in a separate discussion paper.

Accordingly, the following suite of proposals represents the potential amendments that DMPE considers to be viable, practical and necessary to enhance the operation and effectiveness of the MRF Act. DMPE invites stakeholders to consider the proposals and provide feedback.



Proposal 1: Enabling greater flexibility to draw from the MRF in extraordinary events

Recommendation 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.

Proposed legislative amendment:

To account for periods of strain on the MRF, such as a negative economic event, extended period of low interest rate earnings or another unforeseen extraordinary event, DMPE proposes to insert a new section within Part 2 of the MRF Act enabling the CEO of DMPE to authorise, at their discretion, the expenditure of principal monies (up to 20 per cent of principal monies received in the previous reporting period) to be used for the purposes of section 8(2)(a), (b), (c) and (d) of the MRF Act.

Background

The basis of the MRF levy is to obtain the necessary funds to rehabilitate abandoned mine sites. The MRF itself is an agency special purpose account pursuant to the *Financial Management Act 2006* to which monies standing to the credit of the MRF generate investment income (interest earnings). This point is critical as section 8 of the MRF Act sets out a distinction between how principal funds and investment income may be utilised.

Section 8(1)(a)(i) and (ii) of the MRF Act set out that money standing to the credit of the MRF (both principal and investment income) may be expended for the rehabilitation of abandoned mine sites that are, or have been, the subject of mining authorisations in respect of which the levy is, or has been, payable, as well as any affected land relating to those sites.

Section 8(2) establishes that money standing to the credit of the MRF that consists of investment income may be applied (a) to fund the rehabilitation of abandoned mine sites other than those that are described in section 8(1)(a)(i) as well as any affected land relating to those sites. This effectively confines the rehabilitation of abandoned mine sites that have never participated in the MRF Act regulatory framework to being funded by investment income.

Section 8(2) goes on to provide that investment income may also be utilised:

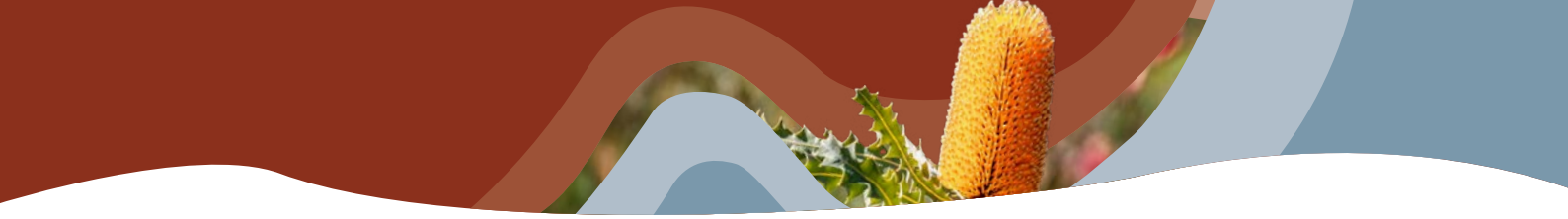
(b) to fund programmes, or the provision of information relating to the rehabilitation of abandoned mine sites;

(c) in payment of the costs of administering the Fund; and

(d) in payment of the other costs of administering and enforcing the MRF Act.

Lessons learned from the COVID-19 pandemic

Typically, abandoned mine sites that have never participated in the regulatory framework are legacy sites that operated and were abandoned prior to 1 July 2014. From 1999 to 2011, the Geological Survey of Western Australia developed an inventory of abandoned mine site features within Western Australia (the abandoned mines inventory) which identified over 190,000 mine site features throughout the State.



The volume of identified mine site features is reflective of the historical prevalence of mining in Western Australia, which has occurred for over 150 years. As discussed within the original Parliamentary debate of the MRF Bill in 2012, the MRF was not expected to be able to immediately address the volume of existing abandoned mine features located throughout the State and instead, it was expected that it would take decades for the MRF to build to a level sufficient to be able to address historical rehabilitation requirements. This context is relevant to understanding the impacts on the MRF arising from the economic consequences of the COVID-19 pandemic.

As discussed within the 10-year statutory review, unexpected periods of low interest (such as during the COVID-19 pandemic) have adverse influences on the investment income that is used to fund rehabilitation activities on legacy abandoned mine features. This has been demonstrated to limit planned rehabilitation works intended to address significant risks posed by abandoned mine features and could potentially also impact the administration and enforcement of the MRF. Recommendation 10 is inherently tied to the experiences from the COVID-19 pandemic and advocates for the need to ensure there is an appropriate and sufficient funding mechanism to allow committed rehabilitation works to continue in times of low interest.

In a worst-case scenario, a significant and prolonged shortfall in available interest earnings has the potential to prevent DMPE, through the AMP, from proceeding with committed rehabilitation works with third parties, which represents safety risks for the community and may result in a financial penalty being incurred through a breach of contract. The MRF is managed in a conservative way to minimise the potential for this scenario to arise, however DMPE is cognisant that even the most conservative financial management cannot prevent the impacts of a prolonged unforeseen economic event like the COVID-19 pandemic.

	2018–19 Actual $000	2019–20 Actual $000	2020–21 Actual $000	2021–22 Actual $000	2022–23 Actual $000	2023–24 Actual $000	2024–25 Actual $000
Contribution from industry	30,723	33,902	34,677	37,717	41,513	43,195	46,911
Interest received	3,094	1,644	694	859	5,733	11,866	15,688

Table 1. Annual MRF levy payments received and interest earnings from FY 2018–19 to FY 2024–25

An analysis of the levy periods leading up to, during and post the COVID-19 pandemic shows a significant decline in the amount of interest earnings in the MRF for three successive levy periods, from FY 2019–20 to 2021–22, with two consecutive periods returning less than $1 million in interest earnings. The reduced interest earnings are attributed to declining interest rates dropping as low as 0.1 per cent, which operationally meant that there was a sudden and unforeseen reduction in the amount of funding available to rehabilitate legacy abandoned mine features. In the same period, contributions from industry (levy payments made by industry) continued to remain steady and grew marginally. However, as discussed above, these funds are not accessible for the rehabilitation of legacy abandoned mine features.

While the AMP was able to successfully adjust its operations to account for the reduction in available funding, the uncertainty of the duration of low interest earnings and the possibility of a prolonged low interest earnings period significantly restricted the AMP's ability to undertake on-ground works and plan future activities. Interest earnings have since recovered in the periods following the COVID-19 pandemic, however DMPE is cognisant that the MRF Act requires adjusting to account for unforeseen events, such as periods of low interest earnings or another unlikely or extraordinary event, to ensure that an alternative or reserve source of funding is available to continue committed and planned works.



In analysing Recommendation 10 of the statutory review and the impacts arising from the COVID-19 pandemic, it is also incumbent upon DMPE to acknowledge the implications arising from Recommendation 6[2]. Recommendation 6 establishes that the Rehabilitation Liability Estimate values (contained within Schedule 1 of the MRF Regulations and used to calculate the amount of applicable levy) have not been updated in line with inflation since the commencement of the MRF Act, thereby creating a greater divide between the amount of levy charged compared to the financial cost of undertaking rehabilitation activities. Together, this means there is less funding available (and less interest earnings available) to rehabilitate abandoned mines. This situation is compounded in a prolonged negative economic event, such as a COVID-19 pandemic-like situation, when existing interest earnings are already committed to existing and planned works, meaning there is little reserve funding available to respond to unforeseen urgent rehabilitation requirements occurring on legacy abandoned mine features.

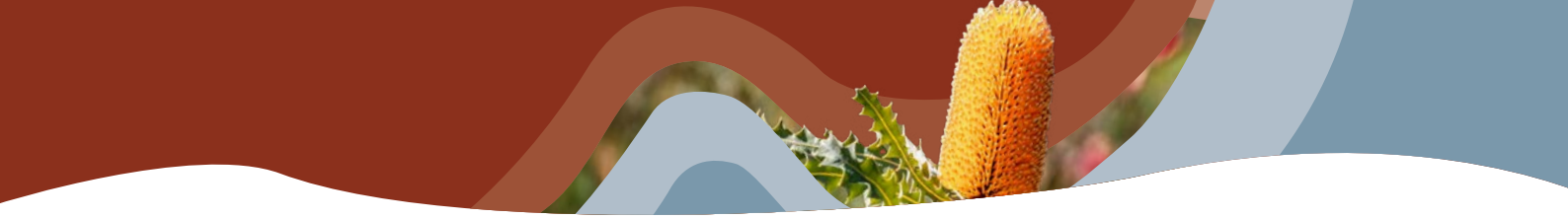
Holistically, DMPE is aware that economic conditions may be volatile and that significant economic events do in fact occur and have the potential to occur on a relatively frequent basis (noting the 2008 Global Financial Crisis which preceded the pandemic). DMPE is also aware of the safety risks and potential financial penalties incurred by not being able to proceed with contractually committed rehabilitation works and that the total value of available interest earnings does not account for inflationary changes since the commencement of the MRF Act. Together, these factors lead to a conclusion that a new mechanism is required to sufficiently account for periods in which the MRF becomes strained, such as an adverse economic event, periods of low investment income or another unforeseen extraordinary event.

Proposed legislative amendment

To mitigate the impact of any extraordinary strain on the MRF, such as periods of lower-than-anticipated investment income or another unforeseen extraordinary event, DMPE seeks to amend Part 2 of the MRF Act to empower the CEO to authorise, at their discretion, additional top-up payments of monies drawn from the principal monies within the MRF to be utilised for the activities specified at section 8(2)(a) through to (d) (inclusive) that would ordinarily be funded from investment income. DMPE proposes an approach that would allow for the access of up to 20 per cent of the previous year's received monies to provide a sufficient buffer to cover the already-planned or in-progress rehabilitation works as well as administration and enforcement activities (which are ordinarily derived from a constrained source of funding) in the event of a prolonged strained period, such as an extended low interest earnings period, while planning is adjusted to accommodate the changes in anticipated growth of the MRF.

In exercising this discretionary power, the CEO of DMPE must be satisfied there is a compelling reason that justifies the drawing of principal funds. This power is proposed to be established as a discretionary power of the CEO as it may be problematic setting a precise threshold for declining interest rates or investment income to give rise to the use of this power and equally, it may be difficult to predict what form of extraordinary unforeseen event may occur in the future. In any event, the exercising of discretion is the established standard for the CEO to exercise their powers and functions throughout the MRF Act, and it would appear to be reasonable to extend this existing standard to this proposed amendment. As safeguard measures, public accountability for the utilisation of this proposed power is provided in the form of multiple reporting requirements in the DMPE annual report, the MRF yearly report and the Western Australian State Budget Papers (with any decision to utilise this power subject to the Parliamentary Budget Estimates process). Proposals to utilise this discretionary power, as well as any ensuing decision, would also be raised with the independent Mining Rehabilitation Advisory Panel and communicated in any subsequent Mining Rehabilitation Advisory Panel meeting communique.

2 Recommendation 6 relates to the MRF Regulations. A dedicated legislative amendment to substantively address Recommendation 6 will be put forward in the ensuing discussion paper proposing a suite of legislative amendments to the MRF Regulations to address the recommendations of the statutory review.



DMPE clarifies that the maximum amount of principal funds that may be authorised to fund the activities set out in section 8(2)(a) through to (d) of the MRF Act would be capped at 20 per cent of the total principal funds received in the previous reporting period (rather than 20 per cent of the total balance of funds held within the MRF) and would reset at the commencement of a new reporting period. There would not be any restriction on how many times the CEO may authorise a drawing from principal monies, provided that the total amount of drawings does not exceed 20 per cent of the total principal funds received in the previous reporting period (the total quantum of funds paid into the MRF under section 7 of the MRF Act, excluding investment income, for the last financial year) and any unused funds will not carry over for utilisation in the following reporting period. Further, there is no intention to utilise the full 20 per cent amount of principal funds received in the previous reporting period, but rather, the value of this proposal is having the security of this funding as a reserve or alternative source of funding in the event an unforeseen economic event occurred. There is also no expectation for any utilised principal funds to be returned or otherwise reimbursed to the balance of principal funds as this would result in an ongoing shortfall of funds derived from interest earnings, thereby conflating the existing problem this amendment seeks to address.

Operationally, DMPE would continue to utilise existing interest earnings to undertake the activities specified in section 8(2)(a) through to (d) of the MRF Act and would only seek to draw from principal funds when existing interest earnings are either exhausted or the existing funds are declining and approaching a conservative threshold buffer. DMPE considers that the 20 per cent figure is an appropriate buffer designed to account for both the potential severity and extended duration of an unforeseen economic event, as well as the historically limited amount of interest earnings relative to changes in inflation since the commencement of the MRF Act. The 20 per cent marker takes into account the value of committed future works, the volume of projects being progressed by the AMP and the nature and degree of forward planning required to be undertaken by the AMP to identify appropriate rehabilitation strategies, mobilise resources and undertake on-ground activities. Together the 20 per cent marker is anticipated to allow for existing committed works to continue uninterrupted, allow continued forward planning as well as maintain a sufficient reserve of funds to respond to unforeseen urgent rehabilitation requirements.

Table 2 shows the maximum value of funds received in each corresponding previous period which may be utilised as reserved funding in the event of a negative economic event. These values are intended to make up the shortfall in the event of low interest earnings to continue committed and planned works, provide certainty to allow for continued planning of future works and serve as a reserve to respond to any unforeseen urgent rehabilitation requirements.

	2018–19 Actual $000	2019–20 Actual $000	2020–21 Actual $000	2021–22 Actual $000	2022–23 Actual $000	2023–24 Actual $000	2024–25 Actual $000
Contribution from industry	30,723	33,902	34,677	37,717	41,513	43,195	46,911
Interest received	3,094	1,644	694	859	5,733	11,866	15,688
Maximum value of reserve funding	–	6,144	6,780	6,935	7,543	8,302	8,639

Table 2. The maximum value of the monies received in the previous levy period that may be drawn on in the event of a negative economic event from FY 2018–19 to FY 2024 –25

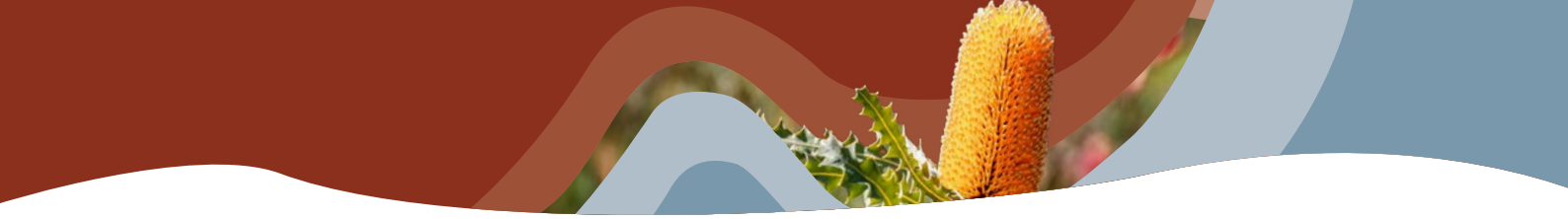


In considering possible approaches to address Recommendation 10, DMPE did not consider the approach suggested by MJA that principal funds ought to be borrowed to fund items that would ordinarily be funded from interest earnings and then repaid thereafter to be a sustainable one. Repaying the utilised principal funds from future interest earnings would have the effect of continuing to conflate the shortfall of interest earnings in future years, thereby continuing to extend the deficiency and limit future works, reducing viability.

While it would be possible to request additional funding from the Department of Treasury and Finance where there is a shortfall in available interest earnings, a more logical solution is to raise the rehabilitation liability values, contribution threshold or contribution rate to obtain greater inflow of levies. While this is a logical response, DMPE is cognisant that for a variety of reasons, it may not always be practicable to raise levies in response to a negative economic event. For example, it would not have been practical to raise levies to account for a shortfall in interest earnings during the COVID-19 pandemic when there was significant economic uncertainty and a pause in industry investment. Another option was to make a portion of the total balance of principal funds in the MRF to be available to fund items that were ordinarily funded from interest earnings, however that option would have resulted in making too great a volume of funding available.

DMPE then turned its mind to the concept of making a portion of the previous year's received monies available as a means of providing reserve funding. Various proportions, including 10 per cent and 15 per cent were tested but were not considered to be appropriate as these percentages did not produce a sufficiently proportionate amount of reserve funding relative to the likely interest earnings that would ordinarily have been received in a standard year in which an extraordinary event did not occur. This would then mean that there would not be a sufficient buffer against the value of already committed planned works, the continued forward planning operations of the AMP, the availability of reserve funding to respond to unforeseen urgent rehabilitation requirements nor account for the potential severity and duration of an extraordinary event, such as a COVID-19 pandemic-like event. While it is conceivable that a lower percentage marker may be introduced to offset the impacts of a relatively minor short-term extraordinary event, it is unlikely to provide a sufficient reserve of funds to be available to respond to unforeseen urgent rehabilitation requirements as the additional funds would be directed towards committed works. Instead, DMPE considers that it would be pragmatic and responsible to pursue a proportionately adequate percentage marker that is capable of providing sufficient reserve funding in the event of a severe and prolonged extraordinary event. This would have the added benefit of ensuring multiple legislative amendments are not required to be pursued to continue to address an unfolding extraordinary event where a selected conservative percentage marker was shown to be inadequate. Multiple and additional legislative amendments to address this item during an extraordinary event would have the effect of interrupting or delaying AMP operations and erode the opportunity of efficient legislative reform provided in this package of proposed amendments arising from the statutory review.

Ultimately Proposal 1, with a 20 per cent marker, was developed as an appropriate and proportional response designed to enable the continued operations of the AMP, including ensuring the availability of sufficient reserve funding to respond to unforeseen urgent rehabilitation requirements and account for the potential severity of a prolonged extraordinary event. Holistically, DMPE considers the proposed approach to be a prudent economic management measure in response to the experiences of the COVID-19 pandemic and any likely future unforeseen event. The approach sets out appropriate limitations for the amount of funds that may be authorised as drawings and provides the basis for strong internal governance controls that justify the release of additional funds.



Proposal 2: Enabling a further 10-year statutory review of the MRF Act

Recommendation 11:

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

Proposed legislative amendment:

DMPE proposes to amend section 38 of the MRF Act to require a further statutory review to be undertaken upon the 10-year anniversary from when of the ensuing legislative amendments to the MRF Act receive Royal Assent.

Background

Section 38(1) of the MRF Act required the Minister to carry out a review of the operation and effectiveness of the MRF Act 10 years on from the day in which the MRF Act received Royal Assent. Section 38(2) then required the Minister to table a report on the review in Parliament.

Section 38 of the MRF Act was not originally part of the MRF Bill that was introduced into Parliament on 15 August 2012. Instead, it was introduced in the course of the Parliamentary debate with concerns expressed that the MRF Bill did not deal with the substantive detail of how the MRF levy was to be calculated and was intended to operate as a whole. Central to these concerns was a wariness that the ensuing MRF Regulations would contain the necessary financial and economic components that establish the operation of the levy and an awareness that the Regulations were not wholly required to be considered in Parliament [3]. The underlying rationale behind these concerns was that Parliament would not have a thorough opportunity to scrutinise the mechanics of how the levy would operate as those components were contained within the Regulations.

To account for this factor, it was suggested that an additional clause should be inserted into the MRF Bill that required a statutory review to be undertaken into the operation of the Act in order to provide Parliament with an eventual opportunity to scrutinise the prospective MRF framework (both the primary and delegated legislation). This suggestion was broadly supported by Parliament.

Subsequently, an additional clause was introduced to establish a requirement to undertake a statutory review of the operation and effectiveness of the MRF Act 10 years on from the day the Act receives Royal Assent. A 10-year timeframe was selected as an appropriate period to provide sufficient time for the MRF to grow and thereby objectively assess its operation and effectiveness. The new statutory review clause was supported across Parliament and resulted in the establishment of section 38.

The requirements of section 38 were fulfilled in April 2024 when the then-Minister tabled a report in Parliament of an independent review of the MRF Act.

3 The passage of delegated legislation such as regulations differs to the Parliamentary process required for primary legislation (proposed bills or acts of Parliament). Bills are introduced in Parliament and subject to Parliamentary debate whereas regulations come into operation when they are approved by the Governor and published in the *Government Gazette*. Regulations are required to be tabled in both houses of Parliament within six sitting days of publication and may be subject to a disallowance motion in Parliament (which if successful, would result in the regulations ceasing to operate).



Departmental consideration

The 10-year review of the MRF marked the first full review of the MRF Act and provided the first full opportunity for stakeholders to prepare feedback and suggest legislative amendments. Prior to that point, the MRF Regulations had only been substantively amended once, in 2021 to account for the emerging minerals-in-brine industry.

The primary benefit of the approach in section 38 was to establish a publicly known point-in-time in which a review was to be undertaken and provide an opportunity for stakeholders to prepare and give feedback. Equally, it also meant DMPE could prepare and collate potential enhancements to the MRF Act. DMPE considers there was a practical utility in, and benefit arising from the formal requirement for undertaking a public review of the MRF Act, including the tabling of a report in Parliament.

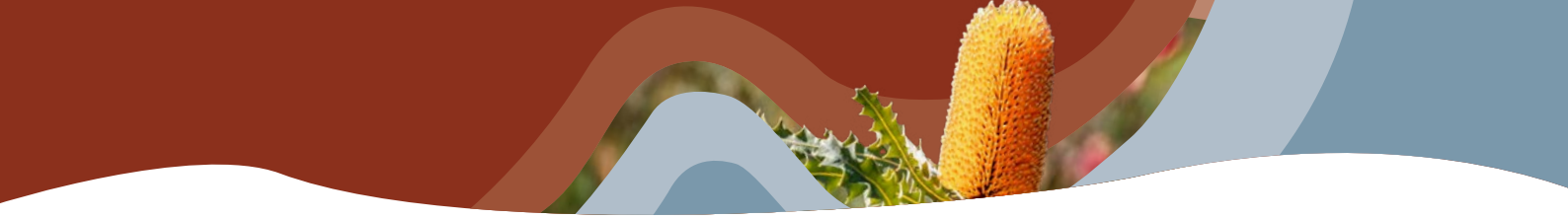
Recommendation 11 of the statutory review recommended that the MRF Act be amended to require a further review of the Act on the 20-year anniversary of the commencement of the legislation. DMPE considers the concept of a further statutory review of the MRF Act would continue to represent public value and practical utility and considers it appropriate to amend section 38 to require a subsequent review of the MRF Act.

DMPE notes that a time lag has occurred between the 10-year anniversary of the Act receiving Royal Assent (which occurred on 5 November 2022), the time in which the statutory review was tabled in Parliament (18 April 2024) (noting that section 38(2) of the MRF Act required the report of the review to be tabled no later than 18 months after the commencement of the review), the department's response to the statutory review (published on 30 October 2025) and the publication of this discussion paper. The cumulative time required to undertake the 10-year statutory review, consider the recommendations arising from the review, develop the suite of proposed legislative amendments and then secure the passage of the ensuing legislative amendments through State Parliament will inevitably reduce the time available between the 10-year anniversary of the MRF Act and the 20-year anniversary. This being the case, DMPE has recognised that a further 10-year statutory review of the MRF Act that is set at the 20th anniversary of the Act receiving Royal Assent would be unlikely to provide sufficient time to evaluate the operation and effectiveness of the legislative amendments proposed in this discussion paper. Instead, DMPE considers that it would be more practical to establish a further statutory review of the MRF Act 10 years on from the commencement of the ensuing legislative amendments to address the recommendations of the 10-year statutory review.

Proposed legislative amendment

DMPE supports Recommendation 11 of the statutory review and proposes to amend section 38 of the MRF Act to establish that the Minister is required to carry out a further review into the operation and effectiveness of the MRF Act. As a matter of practicality, this further statutory review will be undertaken after the end of the period of 10 years, beginning on the day on which the ensuing legislation to amend the MRF Act receives Royal Assent (the requirement for a further 10-year statutory review of the MRF Act will be established from when the prospective Amendment Act secures passage through Parliament and receives Royal Assent).

This proposed amendment supports further opportunities for continuous improvement, public accountability, established opportunities for stakeholder consultation and participation in a future review, sufficient time to objectively evaluate the growth and management of the MRF and an opportunity to review the legislative amendments arising from the 10-year review.



Proposal 3: Refining the operation of reassessments

Recommendation 13:

The proposed extension of the two-year limit set out in section 18 of the MRF Act should be included in a suite of possible reforms which should be consulted upon broadly.

Proposed legislative amendments:

DMPE proposes to:

a. Amend section 18 of the MRF Act to specify that while a reassessment must be commenced within the specified time period there is no requirement for a reassessment to be finalised within that same time period, which would allow reassessments that are in progress to continue to be progressed until they are finalised.

b. Amend section 18 of the MRF Act to empower the CEO to commence a reassessment of a levy amount up to five years from when the original assessment was made in order to capture systemic misreporting, which would otherwise result in the underpayment of levy, as well as to account for accidental overreporting, which would otherwise result in the overpayment of levy. (For the avoidance of doubt, the original assessment is considered to have occurred on the day on which the relative assessment notice was issued).

Background

Section 18(4) of the MRF Act establishes that a reassessment cannot be made more than two years after the original assessment of levy was made. Any reassessment is required to have been both commenced and finalised within two years of the original assessment of levy.

The original rationale behind this provision was to provide sufficient time in which to commence and finalise a reassessment. This provision allows DMPE (and mining authorisation holders) to review a levy amount up to two years from the date of the original assessment to account for anomalies, misreporting or incorrect calculation of levy.

In this context, levy assessments are reviewed by DMPE officers as part of an established compliance review process, the aim of which is to verify a holder's compliance with mandated reporting requirements when determining the assessment information provided under section 15(1) of the MRF Act. A reassessment of the original levy may be the eventual outcome of this process after potential discrepancies in the assessment information have been identified and addressed by the holder to DMPE's satisfaction. Similarly, holders may identify errors themselves and request that they be allowed to modify the information they've provided, which will result in the levy being reassessed. In either situation, the reassessment process itself is brief (with recalculation taking place automatically once modified information is entered and submitted) but the process of arriving at agreed assessment information can be lengthy.



Anomalies and shortcomings of the existing legislative framework

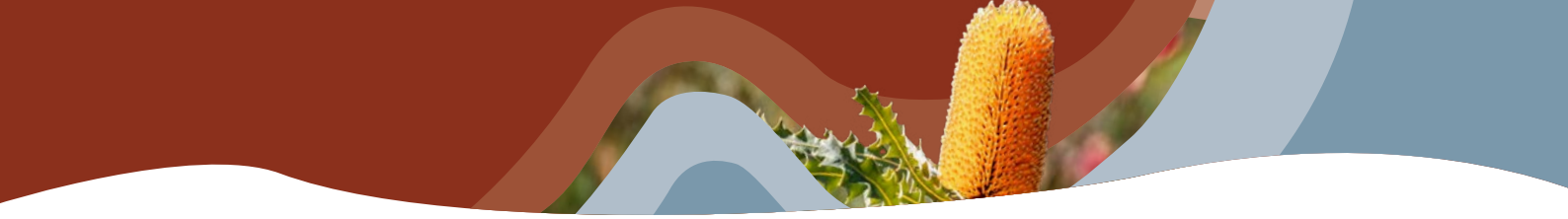
DMPE generally selects original assessments for review utilising a risk-based approach in which mining authorisation holders who are considered to be 'higher risk', have previously misreported or have provided inaccurate information are selected, at which point an initial review is undertaken. At this stage, DMPE is largely in control and managing the timing parameters of this process, having commenced this process within the allotted two-year period. The holder is notified when an initial review has been undertaken and is asked to provide information to explain any identified anomalies. At this point, DMPE is no longer in control of the timing of this process, and it is often the case that this process is constrained by having to wait for the holder to provide information. Given the reliance on historical information, this process may be complicated and time-consuming and there may be occasions where this process becomes protracted; in these circumstances, the present two-year limitation on the reassessment period can compromise DMPE's ability to finalise the review and to determine any modification that may be required to the assessment information – even when the review process was commenced well within allotted timeframe. It is only at the end of this process, after modified information has been entered, that a reassessment occurs in the manner anticipated by section 18. Alternatively, it may be the case that a holder mistimes a request for a reassessment to be undertaken, leaving a limited period in which to both commence and finalise a reassessment.

With respect to the latter, an example is the situation where a mining authorisation holder requested a reassessment of their original assessment when less than a week remained in which to undertake a reassessment before the closure of the two-year window. That original assessment related to a large number of mining authorisations and contained a significant volume of mining-related disturbances. In that situation, the department was required to divert its resources to ensure the reassessment was completed within a rapidly closing timeframe.

Whilst the existing provision requires that a reassessment is both commenced and finalised (that is, 'made') within a two-year window, the existing terms of section 18 of the MRF Act make no provision for the possibility that a review of a levy assessment may still be in progress when the two-year limitation expires.

Recommendation 13 asserts that the existing two-year limitation to complete a reassessment should be amended for the reasons outlined above. However, there is also another enhancement that could be made to section 18 of the MRF Act to address a compliance gap, by allowing reassessments to be made after a longer period has elapsed from the date of the original assessment.

In this respect, it is conceivable that a holder may have misreported disturbance information over a prolonged period, resulting in the levy liability being materially under-stated over multiple periods (either intentionally or accidentally). In contrast, systemic misreporting of disturbance could materially over-state a holder's liability, giving rise to potential over-payments. While this might be observable from a review of historical data, section 18(4) of the MRF Act effectively mandates that DMPE's ability to act is limited to no more than the two most-recently completed periods.



Proposed legislative amendments

To address these matters, DMPE seeks to progress two complementary amendments:

Proposal 3.1 – Removing the requirement to both commence and finalise a reassessment within the period in which a reassessment may be commenced

The first item proposed to be amended to address Recommendation 13 is to amend section 18(4) of the MRF Act to specify that while a reassessment cannot commence beyond the specified limited timeframe, any reassessment that has already commenced does not need to be finalised within that same timeframe. A reassessment that is currently in progress may continue to be progressed until it is finalised. This proposed amendment is intended to mitigate the potential for the integrity of DMPE's review process to be compromised by the need to finalise matters within a timeframe that has been constrained by factors that are beyond the department's control, such as a late request for a reassessment or the time impost waiting for a holder to provide further information.

Through this proposed amendment, DMPE seeks to decouple the existing requirement established in section 18(4) of the MRF Act of having to both commence and finalise a reassessment within two years of when the original assessment was made. DMPE asserts that while it is reasonable to establish a requirement to commence a reassessment prior to specified timeframe, for a variety of factors outlined above, it may not be appropriate to establish a requirement to complete a reassessment within a defined timeframe.

Proposal 3.2 – Extending the time period in which previous assessments may be reassessed from two years to five years

The second item proposed to be amended to address Recommendation 13 is to amend section 18(4) of the MRF Act to empower the CEO (or their delegate) to permit a reassessment to be made up to five years (up from the existing two-year limitation) after the original assessment was made if the CEO considers it appropriate to do so.

This amendment would allow DMPE officers the ability to reassess up to five reporting periods of previous assessments to account for situations in which historical misreporting or anomalies are suspected or identified. Additionally, it allows for regulatory intervention in line with the public interest (to either address systemic or intentional underreporting or to provide a refund in situations of overreporting).

In line with the existing parameters of section 18, this proposed amendment would continue to permit holders to apply to the CEO to request a reassessment (now going back up to five years) where they believe there is an error in the calculation of levy.

DMPE has previously identified a compliance anomaly in which a tenement holder misreported its activities, resulting in an underpayment of obligations over a number of years. While that particular situation was an outlier and related to obligations under the *Mining Act 1978* rather than the MRF Act, DMPE recognises that a similar situation could occur through the MRF. DMPE considers that it is prudent to apply the learnings from that experience and seeks to ensure it is not inherently limited in its ability to reassess levy obligations.

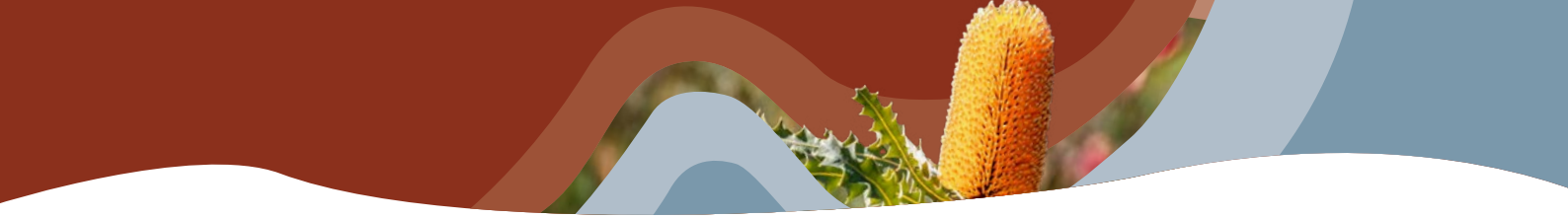


In relation to the proposed timeframe of being able to reassess up to five years after the date of an original assessment, as a comparative example, DMPE notes that section 170(1) of the *Income Tax Assessment Act 1936* (Cth) establishes a general limitation that the Commonwealth Commissioner of Taxation may amend an assessment for an individual up to two years after an original assessment, however an exception occurs in which the Commissioner may amend an assessment at any time if they are of the opinion there has been fraud or evasion. While it is open for DMPE to adopt this approach, DMPE considers there to be a need to provide a degree of certainty for industry to progress business continuity.

A five-year timeframe in which to reassess a previous assessment would align with record-keeping requirements established in other taxation legislation, such as the *Income Tax Assessment Act 1997* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) and on this basis, it is logical and would not be inherently onerous for holders to retain clear records of their activities for five years. Further, it would also be logical for the MRF Act to operate consistently with other established taxation legislation.

In considering an appropriate timeframe for which reassessments may be undertaken, DMPE considered the veracity of its compliance review process, the availability and reliability of historical records, the availability of satellite imagery, the thresholds set in other taxation legislation, the duration of previous compliance review processes (and the likely additional time that would have been of beneficial), the duration of previous comparable compliance anomalies and the need for business certainty and continuity. In balancing these considerations, DMPE came to a view that a timeframe of five years is an appropriate threshold.

Operationally, DMPE envisages that all reassessments will continue to be undertaken with a baseline view to review within two years after the original assessment was made. In practice, that usually allows review of information provided for the two previous reporting periods. If no substantial discrepancies are identified, the reassessment will conclude with those reporting periods, however, where substantial anomalies are identified in those previous two reporting periods, DMPE would be empowered to reassess earlier periods, up to five years from the date of original assessment, as required.
This discretion seeks to permit efficiency in the way departmental resources are utilised. This change would not materially impact a holder selected for a reassessment as, in line with existing processes, they would first be informed of a reassessment once DMPE has completed an initial review and they are asked to respond to any identified anomalies.



Proposal 4: Clarifying the operation and administration of the Abandoned Mines Program (AMP)

Recommendation 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.

Proposed legislative amendments:

DMPE proposes to:

a. Broaden the language used in sections 8(1) and (2) of the MRF Act to describe the activities that are eligible to receive MRF funding to include activities that are ancillary to, support, enable and facilitate rehabilitation;

b. Amend the definition of 'rehabilitation work' in section 10 of the MRF Act to remove the reference for the work to be funded from MRF monies, thereby allowing authorised personnel to enter an abandoned mine site without having a requirement to spend MRF monies; and

c. Replicate or extend the existing direction power of the CEO in sections 29, 30 and 31 of the MRF Act to require the provision reports and data to inform the rehabilitation of an abandoned mine site.

DMPE has identified a number of anomalies within the construction of the MRF Act, which impacts upon the operation and administration of the AMP and forms the basis of Recommendation 15. DMPE has developed three proposed legislative amendments to address these matters.

Proposal 4.1 – Refining the scope of activities that may be funded through the MRF

Background

Section 8 of the MRF Act permits the utilising of MRF monies to rehabilitate an abandoned mine site or related land affected by the site. These monies are used to address the outstanding closure and rehabilitation requirements associated with a site and return the site to an acceptable condition for its subsequent land use.

The works required to return a site to an acceptable condition can logically include activities such as the planting of vegetation and removal of infrastructure and these items could objectively fall within the meaning of rehabilitation. In a practical sense, other activities, such as erecting fencing or signage to secure safety or repairing, upgrading or constructing a haul road to establish access to an abandoned mine site or post-rehabilitation works such as monitoring, are equally important practical ancillary activities towards overall rehabilitation.



Ambiguity

Critically, section 8 (within Part 2) of the MRF Act establishes that monies standing to the credit of the MRF may be utilised to fund the rehabilitation of abandoned mine sites as well as any affected land relating to those sites. An argument could be made that the two sets of activities outlined above are not the same as the former group of activities involve actual rehabilitation whereas the latter group of activities support, enable or facilitate rehabilitation. This point becomes relevant as while section 8 establishes that MRF monies are available for the rehabilitation of an abandoned mine site, an ambiguity occurs as there is no definition provided for what constitutes 'rehabilitation'.

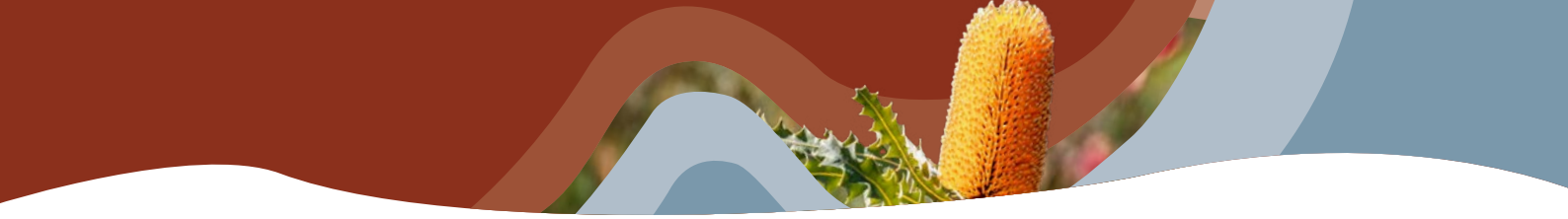
A narrow reading of section 8 may create an impractical anomaly in which only part of the required necessary works to rehabilitate an abandoned mine site may be eligible to receive funding from the MRF. Such an interpretation would be inconsistent with the objectives of the MRF Act and presents an obstacle to the AMP's functions as it would not sufficiently recognise the practical nature of activities undertaken by the AMP, including activities that enable, support or are ancillary to rehabilitation.

For example, building upon the example of haul roads, abandoned mine sites usually feature an established haul road providing access to the site. However, it is not uncommon for such roads to be in a state of disrepair or otherwise not suitable for a variety of reasons to provide access for authorised personnel or required equipment. It may be the case that a new access road must be constructed to bring in the necessary equipment before any actual on-ground rehabilitation works are possible. In this example, road construction, although essential, is ancillary to and facilitates rehabilitation and may occur beyond the boundaries of an abandoned mine site. An impractical outcome would arise if essential activities such as the establishment, re-establishment, maintenance or construction of alternative access routes are not eligible to receive funding from the MRF. As stated earlier, the same argument can be made for the initial activities of erecting a fence and installing safety signage when a site is declared as an abandoned mine site. DMPE holds the view that MRF monies should broadly be available for activities that are logical, practical and necessary to ensure safety and are ancillary and holistically facilitate and support rehabilitation.

DMPE has taken steps to clarify the meaning of 'rehabilitation' having prepared a broad definition within the Draft updated Abandoned Mines Policy, released for public consultation in December 2025. Notwithstanding, in support of Recommendation 15, DMPE holds the view that it would be prudent to progress a legislative amendment to section 8 of the MRF Act to ensure that MRF funding is available for actual rehabilitation activities as well as supporting, enabling and ancillary activities.

Proposed legislative amendment

To address this anomaly, DMPE seeks to revise section 8(1) and 8(2) of the MRF Act in a similar manner to section 9 of the *Legacy Mines Remediation Act 2023* (NT) which provides a broad list of the kinds of activities which may be undertaken and funded from monies held within the MRF. Sections 8(1) and (2) of the MRF Act are specific sections relating to the expenditure of principal monies to rehabilitate abandoned mine sites that are or have previously paid into the MRF (section 8(1)) and the expenditure of interest-generated monies to rehabilitate abandoned mine sites that have not previously paid into the MRF (section 8(2)). DMPE does not intend to amend the specific purposes of sections 8(1) and (2), instead, it seeks to broadly define what activities may be funded from monies held within the MRF.



In this sense, DMPE seeks to adapt the broad language utilised in section 9(2) and (3)(a) and (d) of the *Legacy Mines Remediation Act 2023* (NT) to sections 8(1) and (2) of the MRF Act to ensure MRF monies are able to be used for practical, enabling, ancillary and supporting activities that assist overall rehabilitation, such as investigatory, preparatory, supporting, ancillary and on-ground works including site studies, assessments, designs, travel and expert consultant costs, department salaries and (for employees working on those projects) any approval costs to implement rehabilitation designs, the physical onsite works (demolition, removal, treatment, earthworks, revegetation), the accompanying on site and access works (haul road establishment or maintenance, camp/accommodation facilities, office/ablution/messing facilities), the securing of site, the supervision of the physical works, and the post-work rehabilitation monitoring.

It is also intended to capture some treatments or management measures which make the site safer such as fencing and gating, security, warning signage, maintaining dewatering systems, regular geotechnical inspections, and other site management costs. DMPE also seeks for these amendments to extend to any affected land relating to those sites that occur beyond the boundaries of a declared abandoned mine site as they may be integral towards the rehabilitation of an abandoned mine site (such as the haul road example provided above).

Proposal 4.2 – Removing the requirement for the expenditure of MRF monies to establish a power to enter an abandoned mine site

Background

Section 10(1) of the MRF Act provides a power to enter abandoned mine sites and affected land for rehabilitation work. Within this section, the key term 'rehabilitation work' is defined as 'work to rehabilitate an abandoned mine site or affected land that is funded from money standing to the credit of the Fund'. Through this construction, the power to enter an abandoned mine site is inherently linked to the expenditure of MRF monies.

Anomalies

DMPE has identified two anomalies with this existing construction:

(1) Not all work undertaken by the AMP requires funding from the MRF. For example, some broad rehabilitation activities (such as salvage and demolition), in certain circumstances, may be cost neutral or return a profit. In these situations, an anomaly arises as authorised personnel do not have an ability to enter onto an abandoned mine site, as the definition of rehabilitation work requires the expenditure of monies from the MRF.

(2) By way of the application of mining securities (unconditional performance bonds) within the *Mining Act 1978*, an alternative source of funding may be available to rehabilitate an abandoned mine site. Where a mining security is available on an abandoned mine site, DMPE's preference is to first utilise any available mining security as a source of funding before accessing MRF funds. Through the existing construction of section 10(1), if a mining security is utilised, the power to enter on to an abandoned mine site to undertake rehabilitation works is not necessarily available as MRF monies are not being utilised, meaning authorised personnel have no basis to enter on a site and undertake rehabilitation works. The existing construction of section 10(1) may result an undesirable situation in which MRF monies are required to be utilised even when an alternative funding source is available.



Proposed legislative amendment

The above two situations are anomalies and are not wholly consistent with the objectives of the MRF Act. To address these anomalies, DMPE seeks to amend the definition of 'rehabilitation work' within section 10(1) to remove the requirement for works to be funded by the MRF. Specifically, DMPE seeks to remove the secondary component of the definition referring to "… that is funded from money standing to the credit of the Fund". Removing the requirement of expenditure of MRF monies in order to enter on to an abandoned mine site corrects this anomaly, provides the AMP with greater discretion to perform its functions and is consistent with the objectives of Recommendation 15. DMPE does not envisage for there to be any material impact to stakeholders as section 10 is limited to entering on to sites that have already been declared to be an abandoned mine site pursuant to the MRF Act.

Proposal 4.3 – Requiring the provision of reports and data to inform the rehabilitation of an abandoned mine site

Background

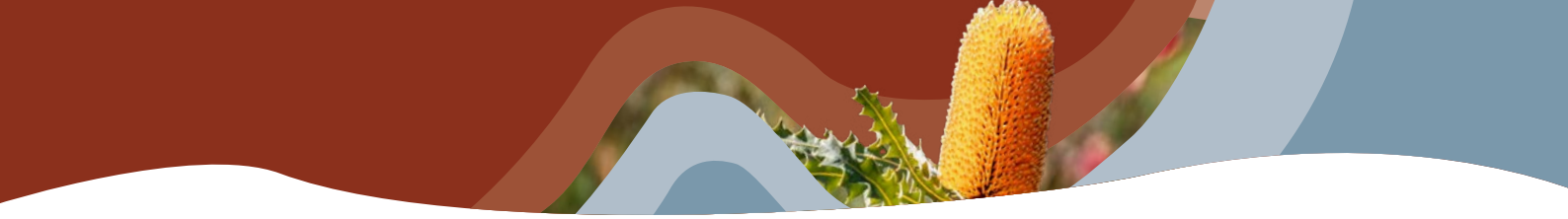
As established throughout this document, the AMP's function is to rehabilitate abandoned mine sites. This function is activated when there is no longer a mining authorisation holder for a mine site and the CEO of DMPE formally declares the land as an abandoned mine site.

Prior to the AMP's involvement, the site, when live, would have an approved Programme of Work (PoW), Mining Development and Closure Proposal (MDCP) or Mine Closure Plan (MCP), informed by site data, surveys and studies etc. A formal PoW, MDCP or MCP, which often do not contain the full suite of raw site-specific data, surveys and studies to establish the overall closure strategy, would be submitted to DMPE for approval and would also outline the tailored rehabilitation strategy developed for that site. Many PoWs, MDCPs or MCPs only go as far as referring to a series of site-specific data, studies and surveys or only provide a summary of raw data rather than providing the source material or data in full, meaning there may be gaps for the AMP in having to implement a rehabilitation strategy in an abandonment scenario.

Existing deficiency

When the AMP takes carriage of an abandoned mine site, it is required to determine what activities are required to rehabilitate the site. The AMP would have access to PoWs, MDCPs and MCPs submitted by the previous holder, however, as outlined above, often these plans do not contain the full suite of relevant information, meaning the AMP does not have all relevant data, reports and studies that are required to inform rehabilitation treatment options. The circumstances of abandonment may also conflate the situation, for example, depending on the state of the site, there may be a need to deviate from the established site closure strategy by way of accelerated infrastructure deterioration or a need to urgently understand the condition of the site, including the infrastructure, to identify and address any safety risks.

The circumstances in which the AMP takes carriage of a site are likely to involve the previous holder entering into administration or being wound up, meaning much of the relevant rehabilitation, infrastructure and safety site-specific information is then held by an administrator, receiver and manager or liquidator, and may no longer be available or accessible. Prior to abandonment, when an authorisation is live, it is often the case that third party specialist consultants are engaged by holders to undertake the underlying site-specific data, survey and study work to inform the overall site closure strategy and prepare the required PoW, MDCP or MCP. It is often the case that these third-party specialist consultants retain copies of these documents, however, by way of a lack of explicit instructions from their former client (and likely contractual confidentiality requirements), they may be reluctant to release these documents to the AMP.



For both situations outlined above, there is no existing power that permits the CEO of DMPE to direct a person to provide information and records to facilitate the rehabilitation of an abandoned mine site. Ultimately, this means that while there may be two separate entities that could provide relevant environmental and safety information (the entity that initially prepared the underlying information and the entity that ultimately holds or has carriage of the information as an administrator, receiver and manager, or liquidator), there is no ability to ensure the AMP is able to acquire this information. In this current situation, the AMP is instead reliant upon stakeholder cooperation, which may not always be forthcoming.

Proposed legislative amendment

Section 29 (and supporting sections 30 and 31) of the MRF Act establishes an existing power for the CEO to require information and records by a direction, however that power is limited to the administration and purposes of Part 4 (Mining rehabilitation levy) of the MRF Act and does not extend to the actual rehabilitation of an abandoned mine site (Part 3).

DMPE considers it would be logical to extend or replicate the existing approach utilised in section 29 so that information required under Part 3 could be sought by a formal direction.

DMPE recognises the implications of issuing a direction for a person to produce information, especially where that person was not the actual mining authorisation holder. Operationally, there is often a high threshold to be met before a direction is considered an appropriate course of action. In the case of the proposed power to obtain information with respect to rehabilitation treatment options, DMPE would only seek to utilise this power where there is a clear need for additional rehabilitation information (including where it is clear that a divergence from the existing closure strategy is required, where environmental or geological conditions have changed to suggest other closure strategies should be considered, or where further information is required to consider all options or to confirm the suitability of the existing closure strategy), where the information sought can be clearly, objectively and unambiguously articulated, where there are potential safety issues, where there is an immediate urgency to undertake remedial action and where it has reason to believe that additional environmental and safety information may be available. Together, these operational considerations would assist in ensuring the proposed direction power is not used indiscriminately. Further, DMPE considers that it may be a likely outcome that potential holders of environmental and safety information may be more forthcoming and willing to cooperate and assist the AMP in its inquiries in a voluntary capacity if this proposed amendment is introduced; that is, the value of the proposed power would not necessarily be through its utilisation but instead by its existence.

Accordingly, in line with the objectives of Recommendation 15, and to assist in determining appropriate rehabilitation treatment options in a timely manner, DMPE seeks to amend the MRF Act to establish an ability for the CEO to acquire information and records specifically for the purposes of rehabilitating an abandoned mine site. DMPE considers the construction of sections 29, 30 and 31 of the MRF Act to be suitable to achieve this objective and proposes to adapt those sections in Part 3 of the MRF Act to obtain environmental and safety information to inform the rehabilitation of an abandoned mine site.



Proposal 5: Realigning the service of notices for dual holders (aligning statutory effect with practical effect)

Recommendation 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.

Proposed legislative amendment:

DMPE proposes to amend section 37A of the MRF Act to align its statutory effect to its practical effect by clarifying that where there are two or more holders of a mining authorisation, the dual holders may nominate one of the dual holders, or their agent, and provide the address of the nominated party, as the nominated party for the service of notices under the MRF Act. This administrative proposal allows dual holders to establish a nominated party for the service of notices, rather than simply nominating an address for the service of notices as permitted in the existing section 37A.

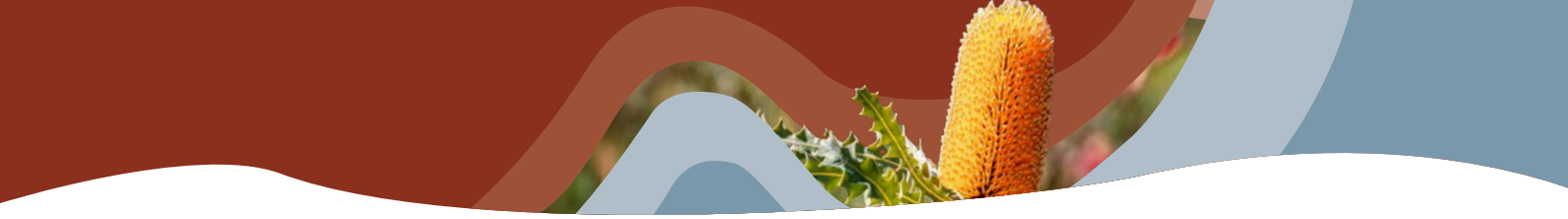
Background

Section 37A of the MRF Act was introduced in 2014 by way of section 14 of the *Mining Legislation Amendment Act 2014*. The provision seeks to enable efficient communications from DMPE in situations where there are two or more mining authorisation holders for a single mining authorisation by permitting the joint mining authorisation holders to nominate the address of one of those holders, or the address of their agent, as their address for the giving of a notice under the MRF Act.

The underlying rationale for this provision is to enable greater efficiency in departmental communications.

Misalignment of legal effect and stakeholder understanding

Notwithstanding the underlying intent of this provision, the existing construction of section 37A provides that joint holders may nominate an address of one joint holder, or an agent on their behalf, for the service of notices pursuant to the MRF Act (as opposed to nominating an actual entity for the service of notices). In practice, the application of this provision allows joint holders to nominate a singular joint holder, or an agent, for the service of documents, however, legally, the parties are simply nominating an address for notices to be directed. While the provision provides for the nomination of an address for service, the manner in which joint holders utilise this provision effectively results in the nomination of a singular joint holder (at whichever address that holder provides, which may be updated from time to time) for the service of notices and has led to a general misunderstanding by stakeholders that section 37A permits the nomination of a singular party to receive notices, when it only allows the nomination of a specific address for that purpose.



Proposed legislative amendment

Recommendation 16 provides that DMPE should consider changes that would ease the reporting burden of mining authorisation holders and essentially advocates for any amendments, whether administrative in nature or otherwise, to assist in the operation of the MRF Act. In this sense, DMPE considers that it would be beneficial to amend section 37A of the MRF Act to align its legislative effect with both its practical utility and the general understanding of stakeholders. Accordingly, the department seeks to amend section 37A to permit joint holders to instead nominate a singular joint holder, or an agent on their behalf to receive notices under the MRF Act and that notices will be sent to whichever address the nominated party provides, which they may update from time to time.

This minor administrative amendment does not detract from the operation of section 37A and is consistent with the underlying objectives associated with its introduction in 2014. This amendment is not expected to result in any material process, system or communication changes from the existing approach.

Discussion points for consideration when making a submission

To assist the consultation process, DMPE has prepared the following questions as reference points when considering the suitability of the suite of proposed legislative amendments:

1. Do the proposed amendments substantively address the recommendations of the statutory review?
2. Do you support the proposed legislative amendments?
3. Do the proposed amendments contain sufficient safeguards to account for unforeseen situations?
4. Are there any identifiable unintended consequences (including, but not limited to, implementation, electronic system or transitional issues) that ought to be addressed?
5. Are there any alternative approaches that would achieve the same or similar policy intent and address the recommendations of the statutory review?

Stakeholder feedback does not need to be limited to the abovementioned reference points.

DMPE considers that the suite of proposed legislative amendments developed by the department represents the most effective, practical and robust potential amendments. While these are the preferred amendments put forward by DMPE, they are not the only available legislative amendments to address the recommendations arising from the statutory review and stakeholders may propose alternative approaches. The department will consider all feedback provided during the consultation process.



Consultation approach

DMPE is seeking feedback from stakeholders for the suite of proposed legislative amendments to the MRF Act outlined above to address the recommendations of the 10-year statutory review of the MRF Act. Public consultation will be open for 12 weeks from November 2026, closing on the date specified on the Have your say consultation page on WA.gov. During this time, interested stakeholders may lodge feedback in response to the suite of proposed legislative amendments outlined in this document to REC.Consultation@dmpe.wa.gov.au. DMPE is also interested in any alternative proposals that stakeholders may have to address the recommendations of the 10-year statutory review.

DMPE invites stakeholders to consider the proposals presented in this discussion paper and welcomes all stakeholder feedback to further develop the ensuing legislative amendments to the MRF Act.

All feedback provided during the consultation process will be reviewed, and following the closure of the public consultation, DMPE will compile all submissions received into a collective response to submissions document, with submitters listed alongside each individual comment. Considered feedback from stakeholders will help inform the final suite of proposed legislative amendments to the MRF Act put forward to the State Government for consideration.

Government of Western Australia

Department of Mines, Petroleum and Exploration

Mineral House, 100 Plain Street, East Perth,
Whadjuk Noongar Country
Western Australia 6004
Tel: +61 8 9222 3333

Online
REC.consultation@dmpe.wa.gov.au
www.dmpe.wa.gov.au

Mailing address
Locked Bag 100
East Perth WA 6892

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