



Ensuring Compliance with Conditions on Mining – Follow-up





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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

**Ensuring Compliance with Conditions
on Mining – Follow-up**

Report 20
November 2014



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

ENSURING COMPLIANCE WITH CONDITIONS ON MINING – FOLLOW-UP

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance parliamentary decision-making to the benefit of all Western Australians.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY
AUDITOR GENERAL
19 November 2014

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Auditor General's Overview

When I reported on *Ensuring Compliance with Conditions on Mining* three years ago, I said that without effective monitoring and enforcement of the conditions placed on mining, 'the State risks losing financial, economic and social returns and gaining potential long term liabilities.' I made a range of recommendations for changes to mitigate that risk. I am pleased to report to Parliament this time that the agencies involved have taken action on my recommendations and that the situation is significantly improved.



The introduction of the Mining Rehabilitation Fund has been the most high profile of the changes. This is a new approach to reducing the State's exposure to the liability of poor rehabilitation of mine sites. It should, over time, provide greater protection to the State than the previous system of bonds. It will also provide funds to progressively rehabilitate the large number of abandoned mines across the State, and I will remain interested in the extent to which the fund enables that long term legacy to be addressed.

There have been other equally important changes. The Department of Mines and Petroleum and the Department of Aboriginal Affairs have both added new IT systems and processes that improve their inspection regimes. There are also better and more mature risk assessment processes in place so monitoring can be better targeted. A new public online register of environmental offsets hosted by the Department of Environment Regulation increases transparency and accountability in what has often been a controversial area.

Overall, these changes evidence a commitment to improvement across agencies. Many of the changes will take time to bed in and for their full impact to be assessed. Nonetheless, Parliament can be much more assured now than three years ago that the State has a reliable view of compliance with conditions, will be better protected from liabilities, and is securing the returns it seeks from mining.

Executive Summary

Background

The natural resources industry is vital to Western Australia's economy. In 2013-14 the State received \$6.9 billion in royalties from minerals, oil and gas. More than 6 000 mining tenements covered nearly 2.4 million hectares in 2013, and exploration and prospecting licences covered another 53 million hectares. Actual mining activity on these tenements covered 145 000 hectares and the sector directly employed 101 000 people.

The financial and economic benefits from mining are clear, but they are not without risk. Beyond the financial, economic and employment risks of a capital-intensive internationally dependent industry, mining has direct impacts on the physical environment. If not well managed and regulated, these can lead to the loss of unique Aboriginal sites or ecological communities, or health risks to local communities.

An important part of regulating the sector is to minimise and where possible eliminate these risks, including State financial liability for damage caused by miners. This involves putting environmental, financial and other conditions on operators that want to access the State's minerals. One of the key challenges to government is to balance the need to protect the State with the desire to provide reasonable and timely access for industry.

In September 2011, we tabled a report titled *Ensuring Compliance with Conditions on Mining* which assessed management activity at five key agencies. We concluded that legislation and powers allowed responsible agencies to monitor and enforce compliance with mining conditions. However, agency implementation meant that the State and Parliament could not be assured on overall levels of compliance with conditions, or whether conditions delivered desired outcomes.

We found that financial returns to the State were well managed but broader environmental and social returns were not well monitored or enforced. Weaknesses in agency practice meant that we could not give assurance that environmental protection and Aboriginal heritage conditions were being met. Finally, the State had only limited financial security against the risk of operators not adequately rehabilitating mines.

Our purpose in this follow-up audit was to assess how well agencies had addressed the issues we found in 2011, in particular the need to:

- increase transparency in the application and monitoring of environmental offsets
- finalise financial security arrangements for mine rehabilitation to reduce financial risk to the State
- improve the monitoring and inspection of compliance with environmental mining conditions
- improve monitoring and inspection of Aboriginal heritage sites on mining tenements.

Audit conclusion

There has been significant improvement by government and agencies in addressing the issues we identified in 2011, although it will take some time before the full benefits are seen. There is more clarity about the roles and responsibilities of various agencies within what remains a complex set of legislative arrangements. Establishing the Mining Rehabilitation Fund has decreased the State's exposure to liabilities, and will help manage the risks posed by legacy mines, although it will take some time to build comprehensive coverage.

However, the Fund does not provide a single financial protection system against rehabilitation failures for mines operating under the 29 mining State Agreements. These miners can opt in to the Fund but are not required to and thus far none have done so. Including State Agreement mines would increase the money in the Fund and the scope to manage legacy sites, but would require case-by-case assessment of risks and benefits to the State.

Improved assessment, inspection and reporting processes mean that the Department of Mines and Petroleum (DMP) has greater capacity to assess whether conditions placed on mines are being met. The centralised, publicly available register of mining offsets improves transparency and makes it easier to track and ensure the fulfilment of offset requirements. The Department of Aboriginal Affairs (DAA) now has a sound approach to monitoring and inspecting how mine sites comply with Aboriginal heritage requirements.

Key findings

Reducing State exposure to rehabilitation liability

DMP has established the Mining Rehabilitation Fund (the Fund) following legislation that was passed in 2012 to replace the previous bonds system. The Fund reduces the State's potential liability in the event that mining operators fail to rehabilitate their sites. Debate about the suitability of the bond system was a major issue in 2011, particularly the fact that bonds could only be used to remediate the tenements for which they were raised. By comparison, the Fund can address problems on any site, and also provides new detailed information and knowledge of mining activity. Membership of the Fund is compulsory for all mines operating under the *Mining Act 1978*.

In the 2014-15 Budget Papers, DMP forecast that the Fund would receive \$45.4 million (\$42.2 million levies plus \$3.2 million in interest) in 2014-15. It now expects to receive \$27 million in total. The reduction in forecast revenue is due to DMP developing a better understanding of the actual costs to rehabilitate mine sites and resulting revisions to the way that payments into the Fund are calculated. This should not have a significant impact on the effectiveness of the Fund.

DMP is yet to finalise important policies associated with defining what constitutes an abandoned mine for the purpose of prioritising them for rehabilitation using interest earned on the Fund. However, it expects this to be done by early 2015. While the actual amount paid into the Fund by miners can only be used to rehabilitate existing sites, interest earned by the Fund can be used to rehabilitate historical 'abandoned' mine sites. This is the first time that rehabilitation of these sites has been systematically provided for, although the available moneys will be relatively small compared to the costs of dealing with all abandoned mines.

DMP has a suitable process for deciding when individual bonds can be retired. The release process commences when the operator makes their first annual levy payment into the Fund but then other criteria have to be met. At August 2014, DMP had retired 1 634 bonds worth \$329.8 million while 3 647 bonds worth \$889.6 million were still held. Of the bonds still held, 81 valued at \$13.7 million had been retained as the operator had not met all criteria for release.

Improved monitoring and inspection of mine sites

DMP has addressed the weakness in its planning, monitoring and inspections of mines that we found in 2011. This means that it now has sound controls over receiving, analysing and acting on information from mine operators, whether from formal reporting or on-site inspections.

DMP has improved how it collects and analyses compulsory Annual Environmental Reports (AERs) from operators. In 2011 DMP rarely knew if operators had lodged AERs, and reviewed

even fewer. The introduction of the new whole-of-life online management system (called EARS2) means that the receipt of, or failure to lodge, AERs is now automatically flagged. The new system gives increased oversight of important information about mine operations, and minimises the chance that poor outcomes or breaches of conditions will go unnoticed. The system also helps identify sites and operators for inspection and audit.

DMP now has a rigorous inspection approach to selecting which mines it will inspect. DMP has determined that all sites assessed as 'high risk' will be inspected each year, and that 20 per cent of all others will be inspected. It plans to inspect 181 mine sites in 2014-15 which represents approximately a quarter of all sites in WA. This should ensure that its coverage is adequate into the future.

There is now a clear process and documentation guiding DMP's inspection practices. Inspection activities and reporting requirements are now included in the EARS2 system. This gives greater consistency and oversight. It also allows DMP to analyse non-compliance across the board, which will help the department focus its inspection program. However, the inspection module on EARS2 was only implemented this year, and it will take time to assess what impact it has had. In the three months to September 2014, DMP inspections identified 27 cases at six mine sites which required corrective action by operators. None of these cases constituted serious non-compliance. In 2013-14, DMP reported major non-compliance on six sites.

Clearer responsibilities for State Agreements

DMP and the Department of State Development (DSD) expect to finalise a formal protocol to clarify their respective roles and responsibilities regarding mining that takes place under State Agreements by early 2015. This will make for more transparent and better coordination of agency effort for these sites, including timelines for reporting and providing advice, and inspection responsibilities. State Agreements are individual Acts of Parliament permitting large scale industry (including mining) on a particular site. Each Agreement has specific conditions and requirements, often outside the *Mining Act 1978*. The unclear responsibilities between DMP and DSD for monitoring conditions was a key finding of the 2011 report.

Miners operating under the 29 State Agreements related to mining are not required to participate in the Fund, but can elect to sign up. None have done so thus far. The position is similar to 2011, and the State does not face increased risk. However, there is no single arrangement to give the State financial security against rehabilitation failure on these State Agreement sites. Including all State Agreement mines would significantly increase the revenue available to the Fund, as well as the information and knowledge the State has about mining activity. State Agreements typically involve large multi-national companies and complex contractual obligations including rehabilitation conditions. Therefore, any move to include them in the Fund will require careful consideration of the risks and benefits to the State.

Greater transparency of offsets

The Department of Environment Regulation (DER) has established and is the custodian of a publicly accessible online Environmental Offsets Register, which went live in 2013. This includes information on the number and type of all offsets approved since then, including conditions requiring miners to fund research or purchase land with similar conservation values or flora and fauna as the impacted site. The register contains offsets that are approved under Part IV of the *Environmental Protection Act 1986* and also under Part V of the Act. Part IV offsets are managed on the register by the Office of the Environmental Protection Authority. Part V offsets relate to clearing native vegetation and are managed either by DER or by DMP under delegation.

The register does not yet contain comprehensive historical offset information, although DER is working to achieve this. In 2011 we reported that the lack of a register to collect information and to facilitate monitoring of offsets was a major weakness. This new system provides the State and community with much greater information about the nature, delivery and value of offsets and may help lessen the controversy that they have attracted.

The responsible agencies have included offsets in their compliance activity, thereby giving more assurance about the reliability of the register. DER recently carried out a specific review of offset compliance for permits it has granted (although these are not generally mining activities). The Office of the Environmental Protection Authority reports on offset compliance in its annual reporting. DMP has established eight offsets, mainly for limestone and sand mining.

More oversight of Aboriginal heritage sites

DAA has introduced significant changes to the way it ensures compliance with conditions under the *Aboriginal Heritage Act 1972*. It has introduced a sound audit and inspection regime for mining operators dealing with significant Aboriginal heritage sites. We found no cases where operators had failed to comply with their conditions under s18 of the Act. DAA has also improved its information system, and now tracks reporting by permit holders more completely than in 2011, when we found little was done. However, these new systems have not yet been fully adopted and integrated. A major revision of the Act is expected to be put before Parliament soon, which would increase the powers of the Department to act in cases of non-compliance, and should also improve oversight.

Recommendations

Government and agencies should work to bring State Agreement operators into the Mining Rehabilitation Fund under the same arrangements as miners operating under the *Mining Act 1978*, where this does not increase financial risk to the State. This would increase the revenue available to rehabilitate current and historical sites. It would also improve the data available to the State on mining activity. This process could involve significant negotiation with operators, and redrafting of individual State Agreements.

The Department of Mines and Petroleum and the Department of State Development should finalise the protocol on shared responsibilities for monitoring State Agreements by February 2015.

The Department of Mines and Petroleum should finalise policies and procedures for assessing abandoned mines by June 2015. This will ensure that proceeds from the Fund can be applied to address legacy mines.

The Department of Environment Regulation should identify opportunities to increase the information that is publicly accessible through the offsets register on the results of offsets. This could include collating details on what funds have been collected, how they have been used and what land has been added to the public estate.

The Department of Aboriginal Affairs should ensure it implements the online AHELP system across the whole life of permits issued under the *Aboriginal Heritage Act 1972*. This will give better oversight of all mining and other activities near important heritage sites. It will involve changing some of its existing work practices.

Agency Responses

Department of Mines and Petroleum

The Department of Mines and Petroleum (DMP) welcomes the findings and recommendations of the Auditor General's report on "Ensuring compliance with conditions on mining – follow-up". Since the previous OAG audit in 2011, DMP has implemented significant changes to its operational assessment and compliance processes for improved oversight of mining activities. This includes the implementation of the Mining Rehabilitation Fund to deal with the financial issues arising from legacy and abandoned mines.

In May 2010, DMP commenced the Reforming Environmental Regulation program, to deliver reforms across the environmental regulatory functions of the department. Implementation of the Auditor General's recommendations of 2011 has been delivered through this program.

As part of the Reforming Environmental Regulation program, DMP has engaged in extensive and constructive dialogue with stakeholders. Continuing engagement is a priority to which the department is committed to ensure the highest regulatory standards are developed and maintained.

DMP welcomes these findings as an endorsement of its move to a more efficient and outcomes based regulatory regime in general; and the Reforming Environmental Regulation program specifically. The department has already commenced work on the matters raised by the Auditor General in this report, and considers that the reforms implemented by DMP over the last three years will provide a sound base for those recommendations to be addressed.

The department appreciates the efforts of the Office of the Auditor General in undertaking this audit.

Department of Aboriginal Affairs

The Department of Aboriginal Affairs has undertaken a significant program of reform since 2011 to improve administration under the *Aboriginal Heritage Act 1972* (AHA). This has included:

- A focus on improving transparency, accountability, efficiency and effectiveness of decision-making processes. This has resulted in significant streamlining of business processes, including the implementation of stage 1 of a new electronic lodgement and tracking system (AHELP) in May 2014. It is anticipated that further stages of AHELP will be rolled out in 2014-15 and 2015-16 including electronic tracking of proponent compliance with section 18 conditions by June 2015. This will address the recommendation of the Auditor General's follow-up audit;
- Improving the quality of information provided by and to all stakeholders with a focus on building strong partnerships with Aboriginal people, industry and all levels of government;
- Playing a more strategic role in protecting Aboriginal heritage including the establishment of a dedicated compliance team in 2011 to investigate breaches of the AHA and to monitor compliance with section 18 consent conditions; and
- Drafting of amendments to the AHA which aim to ensure that the legislation remains contemporary.

Department of Environment Regulation

DER supports the key findings in relation to the question of whether environmental offsets are comprehensively and centrally identified and tracked.

The WA Government Environmental Offsets Policy was released in September 2011, and committed to the development of a public register for offsets in Western Australia to meet Government, industry and community expectations for transparency and accountability. The Environmental Offsets Register was developed by DER supported by an interagency advisory group in consultation with key stakeholders, and launched on 13 August 2013 by the Minister for Environment, Hon Albert Jacob MLA.

The register contains records of all offsets from 25 July 2013 and DER and the Office of the Environmental Protection Authority are progressively capturing historic data back to July 2011 within available resources.

DER accepts that the timeframe for recording the acquittal of offset funds for their intended purpose can be improved, and is implementing measures to achieve this.

Department of State Development

The Department of State Development (DSD) notes the reports and its recommendations.

The Department notes that the OAG has recommended that Government and agencies should work to bring State Agreement companies under the same arrangements as those operating under the *Mining Act 1978*, and this is a negotiated process which may involve amendments to the State Agreements and scheduling in the MRF. The Department will work towards this outcome where it does not increase the financial risk to the State and as opportunities arise in the future.

In relation to the operating Protocol on shared responsibilities between the DSD and DMP, this has improved and formalised communication on operational matters between the agencies and the Department will work with DMP and endeavour to finalise it by February 2015.

Audit Focus and Scope

The focus of this follow-up audit was the progress agencies have made since our 2011 audit of *Ensuring Compliance with Conditions on Mining*. We focused on three lines of inquiry:

- Has the Department of Mines and Petroleum effectively made changes to meet the recommendations of our 2011 report?
- Are offsets comprehensively and centrally identified and tracked?
- Has the Department of Aboriginal Affairs improved its oversight of s18 of the *Aboriginal Heritage Act 1972*?

Our scope included the actions taken by DMP, DAA, DER and DSD to meet the key recommendations of our 2011 report. We sought information on the efforts undertaken by agencies, interviewed staff and senior officers, and reviewed documents, policies, information systems and data. Where there was new activity we conducted more detailed examinations on a risk basis.

Our 2011 audit covered other areas that are not included in this follow-up. In 2011, we looked in detail at how DMP collected mining royalties, and found that they were collected accurately and efficiently, and made no recommendations about the practice. As a result this area was excluded from the follow-up. We also examined aspects of the work done by the Office of the Environmental Protection Authority, and similarly made no significant findings or recommendations. Hence, they were also not included in this audit.

This audit was conducted in accordance with Australian Auditing and Assurance Standards.

Government and agencies have made significant improvements since 2011

Since our 2011 report there have been many important changes to broad-scale policy settings, technical and systems improvements and more focused risk-based approaches to monitoring and inspection. These changes include actions to address the recommendations in our 2011 report. While the changes have not all been fully implemented, in each case the next steps are clear, and agencies expect that outstanding issues will be resolved in the near future.

One issue that has not advanced since 2011 is the place of State Agreements. DMP and DSD are progressing a formal protocol that will make their individual responsibilities more clear. However, miners operating under State Agreements are not required to participate in the Mining Rehabilitation Fund. Obtaining their involvement would increase the State's capacity to deal with abandoned mines and enhance its information about mining, but needs to be managed to ensure that risk to the State is not increased.

While the State's risk of liability in regard to State Agreement mines has not changed since our 2011 audit, financial security and information about mining would be better if these operations, which include some of the largest operations in Western Australia, were part of the mainstream regulatory framework.

The Mining Rehabilitation Fund has reduced State liability

The Fund addresses the weaknesses in the old system

In 2011 we found that the State was exposed to significant financial risk from inadequate rehabilitation of mine sites after their closure, and recommended that this approach should be revised. At that time, individual bonds totalling \$1.2 billion were held against particular tenements, and could not be used except to rehabilitate those particular sites. The bonds covered less than 25 per cent of the predicted cost of rehabilitating any particular site.

After a broad review, including industry and public consultation, the bond system was replaced by the *Mining Rehabilitation Fund Act 2012* (the Act) and Regulations. The Mining Rehabilitation Fund (the Fund) acts like an industry-funded insurance scheme, transferring the risk of poor outcomes predominantly to the industry. Operators are required to rehabilitate sites and also pay a small non-returnable annual levy based on whatever disturbance they have not rehabilitated. This approach both frees up operating capital for industry, and gives the State more freedom to fund the most necessary rehabilitation needs. The Fund has been designed so that in any year it should be able to cover the cost of rehabilitating the mine with the largest liability in the scheme.

The Fund works in a number of ways to reduce State liability. First, it levies miners annually against the rehabilitation costs of their mine sites. Second, it builds an ongoing special purpose account that can be used to rehabilitate any mine site if operators fail to do so, though the State would also seek to recover costs from the operator. Finally, it allows interest earned from levies to be used to rehabilitate 'abandoned' mines, including many thousands of historical sites across the State. This addresses the main weakness of the old bond system, where bonds could only be used on the particular tenements they were held against.

Annual levies are collected according to the net annual environmental disturbance on each mining tenement. Regulations issued under the Act established five categories of environmental disturbance activity, each with a set rate for the cost of remediation per hectare (see Table 1).

Rehabilitation Category	Description of mining activity	Levy rate per hectare
A	<ul style="list-style-type: none"> • Tailings or residue storage facility (class 1) • Waste dump or overburden stockpile (class 1) • Heap or vat leach facility • Evaporation pond • Dam – saline water or process liquor 	\$50 000
B	<ul style="list-style-type: none"> • Tailings or residue storage facility (class 2) • Waste dump or overburden stockpile (class 2) • Low-grade ore stockpile (class 1) • Plant site • Fuel storage facility • Workshop • Mining void (depth of at least five metres) – below ground water level • Landfill site • Diversion channel or drain • Dam – fresh water 	\$30 000
C	<ul style="list-style-type: none"> • Low-grade ore stockpile (class 2) • Sewage pond • Run-of-mine pad • Building (other than workshop) or camp site • Transport or service infrastructure corridor • Airstrip • Mining void (depth of at least five metres) – above ground water level • Laydown or hardstand area • Core yard • Borrow pit or shallow surface excavation (depth of less than five metres) • Borefield • Processing equipment or stockpile associated with basic raw material extraction • Land (other than land under rehabilitation or rehabilitated land) that is cleared of vegetation and is not otherwise described in this table 	\$18 000
D	<ul style="list-style-type: none"> • Land (other than land under rehabilitation or rehabilitated land) that has been disturbed by exploration operations 	\$2 000
E	<ul style="list-style-type: none"> • Land under rehabilitation (other than land that has been disturbed by exploration operations) • Topsoil stockpile 	\$2 000

Source: OAG adapted from MRF Regulations 2013

Table 1: Mining Rehabilitation Fund rehabilitation rates

The annual levy on each tenement is one per cent of the total liability, unless the total assessed cost is less than \$50 000 (see Table 2). These operators are still required to submit their disturbance data.

Operators must register to participate in the Fund through the DMP online system, and then submit a self-assessment of liability through the same system. The system allows operators to select their own levy dates each year, and these do not have to match other environmental reporting dates. This means that a company can minimise its levy payment in any period. However, this poses no extra risk to the State because the operator either rehabilitates the site or pays the levy.

Example of calculating the levy for Tenement X-123			
	10 hectares of Category 'A' waste dump class 1 @ \$50 000 per hectare	=	\$500 000
+	17 hectares of Category 'B' plant site plus 23 hectares Category 'B' landfill site @\$30 000 per hectare	=	\$1 200 000
+	21 hectares of Category 'C' sewage pond @18 000 per hectare	=	\$378 000
Total rehabilitation liability estimate		=	\$2 078 000
Levy payable (1% of rehabilitation liability estimate)		=	\$20 780

Table 2: Example of estimating rehabilitation levy

The work to establish the Fund has been based on a Treasurer's Advance of \$4.5 million. This provided for the continuing administration of the fund as well as the building of the online Fund system, which is a component of the Department's online mine management system, called EARS2. DMP expects to begin repaying the advance in four to five years.

Industry has signed up, although revenue is lower than expected

The vast majority of miners have signed up to the Fund

At end of September 2014, over 99 per cent of owners of the State's 22 000 mining tenements were in the Fund. The system went live in July 2013, and was voluntary for the first year, becoming compulsory on 1 July 2014. Numerous operators signed up during the voluntary period, providing \$6.7 million to the Fund. Because participation was voluntary, no fines or penalties were imposed during this period.

Out of the 22 000 tenements, 1 184 tenements or five per cent had not been registered as required by 1 July 2014. The owners were all issued infringement notices for lateness, with a penalty of \$4 000 each. The \$4 000 penalty was established by Regulation but is considerably less than the possible \$20 000 penalty available under the Act.

Application of the \$4 000 penalty was immediately enforced. To encourage participation and help miners adjust to the new system, DMP sent repeat reminders to these operators rather than immediately require payment of the penalty. By early September about 60 operators had still not registered 182 tenements. DMP will hand over the infringement process for any unresolved cases to the Department of Attorney General's Fines and Enforcement Registry in December 2014.

Revenue into the Fund is less than forecast due to lower actual costs

Although nearly all miners have registered for the Fund, revenue from the levy is now expected to be lower than forecast in the 2014-15 State Budget. The 2014-15 Budget Papers forecast that the Fund would receive \$45.4 million (\$42.2 million levies plus \$3.2 million in interest) in 2014-15. DMP now expects to receive \$27 million in total. If this rate continued, by 2017 the Fund would hold between \$90 million and \$94 million, with between \$4.3 million and \$6.9 million in interest, depending on settings. This compares with \$155 million and \$16 million in interest using Budget Paper figures.

The lower than forecast revenue relates to an initial over estimation of the cost of rehabilitating the categories of environmental disturbance per hectare. This in turn led to an overstatement of the total estimated revenue, based on an unchanged estimate of the amount of disturbance involved.

In setting up the Fund, DMP initially estimated the costs per hectare for the five categories of rehabilitation at:

- \$100 000 per hectare for Category A
- \$60 000 per hectare Category B
- \$30 000 per hectare Category C
- \$18 000 per hectare Category D
- \$2 000 per hectare Category E.

In April 2013 DMP received a commissioned analysis of actual rehabilitation costs as part of its process to finalise the regulated rates. The review, which assessed information from 500 miners on activity on 39 000 hectares, found that the actual rehabilitation costs were lower than estimated.

The lower revenue will impact the amount of interest earned by the Fund, and therefore the amount of money available to rehabilitate abandoned mines. This should not have long term impacts, especially if the cost of rehabilitating abandoned mines is similar to the cost for current activity, and if DMP keeps down the costs of administering the Fund. However, it will impact how quickly DMP can act, but the effect should diminish over time as interest compounds. The amount of work DMP does in this area will always have to be adjusted to match its income.

Any significant reduced revenue might require rethinking activity rates and/or the one per cent levy rate. A review of rates is already planned for 2017. We also note that the Fund is the first opportunity to accurately understand activity and rehabilitation need across the State. Whatever the final outcome, these actual figures should be reflected in Budget Estimates.

Bonds are being released appropriately

In almost all cases the Fund should replace the bond system. When DMP receives the annual levy for payment into the Fund, it begins the process for releasing the bonds on each tenement. This releases often substantial amounts of capital to operators.

Payment of the annual levy does not alone trigger release of the bond. DMP has a number of criteria which must be met if the bond is to be released. These include:

- Australian Security Investments Commission checks to ensure that the operator's controlling business is not under administration, in liquidation or have a winding-up order or similar. Such a condition would indicate a need to retain the bond as security against the risk of inadequate remediation of the operator's site.
- Checks to establish if the operator has failed to lodge production reports or pay royalties on time and in full or has been issued fines or directions or orders to modify or stop work in the last two years. If the operator does have such history, then they must write to DMP outlining why its bond should be retired.

At 21 August 2014, DMP had retired 1 634 bonds worth \$329.8 million. The Department still held 3 647 bonds worth \$889.6 million. Of these, 81 bonds valued at \$13.7 million had been retained after the operator signed up to the Fund.

We reviewed a well-publicised case where an operator went into voluntary receivership soon after signing up to the Fund and having its bond of \$3 million retired. This could have left the State with a liability of \$16.7 million. We found that in this case DMP had conducted the appropriate checks and found no indication that the company was unstable. Since then another company has taken on the tenements, and therefore taken on the rehabilitation liability. As the system matures and more bonds are retired, there will be very few opportunities for such occurrences.

In July 2014 a revised version of the bond system was introduced to run alongside the Fund. The revised bond policy is aimed at giving the State more protection against the risk of liability where DMP has assessed that a tenement holder is a high risk of not completing their rehabilitation obligations. Under the revised bond arrangement, a bond can be set at 100 per cent of the assessed rehabilitation liability rather than the 25 per cent rate used in the past.

The Department of Mines and Petroleum needs to finalise how it designates and decides to act on abandoned mines

DMP is developing its policy and criteria for addressing abandoned mines and expects to release the policy for public consultation in December 2014. When finalised, this will determine how it prioritises abandoned sites for rehabilitation, and how it funds this activity from the interest earned by the Fund. This is vital to the Fund achieving its goals, and should be finalised as quickly as can be managed.

The Fund is the State's first effort to systematically provide for the management of abandoned sites. While these sites have long been recognised as a significant issue to the State, both financially and in terms of public safety, there has been no agreed way to define them or allocate funds to deal with them. For instance, a Ministerial working group in 2012 believed that there could be about 200 000 abandoned mine features in WA, while DMP has estimated there are 17 000 full mine sites.

Under the *Mining Rehabilitation Fund Act* the Department has created a five member Mining Rehabilitation Advisory Panel to provide independent advice to the Director General. As part of its role, the panel has recommended four pilot sites for rehabilitation of abandoned sites. DMP informed us that these offer a range of technical, size, and safety issues. The Department believes they will also allow it to measure the actual cost of rehabilitation, which will feed into any review of the levies and rates. This will be important given the lower than expected revenue coming into the Fund and hence lower interest being earned. If revenue remained current for four years, and there was no expenditure from the Fund, about \$8 million would be available from interest to act on abandoned sites. While not insignificant, this level of funding will be well short of what is needed to address the issues at all abandoned sites.

The Department of Mines and Petroleum's inspection regime is now well designed and provides strong coverage

DMP has made significant changes and improvements to its inspection regime since 2011. The current approach gives good coverage of mine sites, based on a comprehensive risk assessment process. It also includes clear guidelines for inspectors, good record management, and the ability to analyse outcomes as a basis for future inspections. Having a sound inspection and follow-up regime is vital to ensuring the regulatory system works to its best effect. This is more important given that self-reporting by operators is DMP's main method of gathering information.

In 2011 we noted that DMP was introducing a risk-based inspection system, but that it needed improvement. In particular we recommended that they:

- determine the base level of inspection effort that would give reasonable assurance that conditions were being met
- finalise the risk-assessment process
- improve controls and guidelines over inspection processes to ensure consistency, including setting mandatory inspection criteria
- better monitor and analyse non-compliance found through inspections, and feed this back into the planning process and condition-setting framework.

DMP has acted on each of these areas since 2011, and the current process is sound. It will, however, take some time for the Department to assess its overall effectiveness.

The inspection regime has been set to give reasonable coverage across the board, based on clear risk guidelines. Importantly, DMP has set expectations for the amount of inspection needed to give confidence in the broad regulatory framework. This is an improvement since 2011, when there was no base level of inspection. DMP has decided that all 'high' risk sites should be inspected, along with 20 per cent of other sites. The number of high risk sites is not pre-determined but is calculated on case-by-case risk assessments.

Each mine site is annually assessed via a formal risk process. This includes previous performance, technical complexity, the nature of the material mined, time since last inspection and proximity to towns. These factors are brought together and an annual inspection plan is created. In 2014-15 DMP will conduct 181 inspections (about 26 per cent of all mines) and 130 desk-top reviews. In total they will reach 45 per cent of mines.

Inspections are based on a clear framework and guidelines. This improves the degree of consistency in a number of ways. First, there are minimum inspection criteria for all inspections, increasing the consistency across different inspectors and different types of mine. Second, standardised reporting of inspections is required. Third, senior officers are required to approve all inspection reports.

The online EARS2 system lets the Department of Mines and Petroleum track and analyse mine performance or non-compliance

Since 2011 DMP has expanded its online mining information and management system so that it now provides comprehensive coverage across a mine's life. Known as EARS2, the system tracks sites from application through to closure including tracking Annual Environmental Reports, Fund applications, and site inspections and compliance activity. This makes it easier to assess performance and issues across different sites. The system also has good controls and requires inspection reports to be approved by senior officers.

In 2011 we found that DMP could not easily assess performance by miners. It could not report on what non-compliances had been found, what actions had been taken to resolve them, and whether there were any common characteristics of non-complying operators.

The new system now allows for reporting on all non-compliance, and whether or not matters have been resolved. This function of EARS2 came online in July 2014, and at the time of audit was being used on an as-needs basis rather than in a way to focus inspections and other activities. If this was done routinely it would improve their processes.

In the three months to September 2014 inspections identified 27 cases requiring corrective action by operators. Of these, 13 had been finalised and the appropriate action taken. In the other 14 cases action had not been finalised. They ranged from a direction to store poly pipe, to the need to report on an incursion over a tenement boundary, to the need to finalise rehabilitation by the middle of 2015. None were deemed major non-compliance.

By comparison, in 2013-14 DMP reported major non-compliance on six sites, following 169 site inspections. In 2011 DMP found it almost impossible to determine the levels of non-compliance, and its reporting was poor. The new reporting through EARS2 is an improvement, but it is too soon to assess whether compliance performance has changed since its introduction.

DMP released the disturbance information gathered through the MRF system to the public in September 2014. This data includes tenement numbers, type of disturbance, area disturbed, and area rehabilitated for 2013-14. It has data on 22 000 individual tenements with disturbance covering 144 740 hectares, of which 31 796 hectares had been rehabilitated during the year. Public availability of this information increases transparency and accountability, and also provides an ongoing avenue for public and academic research.

The Department of Mines and Petroleum and the Department of State Development are improving coordination, but State Agreements are not required to participate in the Mining Rehabilitation Fund

In 2011 we found that responsibility for mining was dispersed across many agencies with a particular risk existing where mining took place under State Agreement Acts. Our concern related to a lack of active monitoring and enforcement of mining conditions arising from unclear responsibilities between DMP and DSD, which facilitates and administers State Agreements. We reported that:

There is a risk that non-compliance with environmental requirements will not be identified or addressed on all 26 State Agreement mines because DSD and DMP have clear but differing views of their roles. DSD does not conduct active monitoring and enforcement, and expects that DMP will do so. DMP considers that it does not have the legislative powers to fulfil a monitoring and enforcement role on State Agreement projects where the Mining Act is not specifically applied.

As a result, we recommended that the two agencies should establish comprehensive and agreed responsibilities for State Agreement projects. The agencies are close to completing this process. DMP and DSD have an existing high level Memorandum of Understanding, but are finalising a protocol of cooperative working arrangements for State Agreements. This better describes responsibilities, adds timelines and includes KPI reporting for the first time. The protocol is in draft for signing by the two Directors General. The protocol covers matters such as how long it should take to provide advice on environmental reports from mines on State Agreements and providing reports on inspections of State Agreement sites.

In 2011 we could not be certain that mining on State Agreement sites was included in DMP's inspection regime. This time, we found that State Agreement sites were included, and that 16 were set for inspection in 2014-15.

The Minister for State Development approves proposals for development under State Agreements following an environmental assessment of the project. For most State Agreement proposals, DMP provides advice to the Minister for consideration. Any conditions attached to the approval are imposed by the Minister under the *Environmental Protection Act 1986* rather than by DMP under the *Mining Act*. Most State Agreement projects require Annual Environment

Reports and some require Triennial Environmental Reports. DMP is required under existing practice, and within timelines under the draft protocol, to assess these reports. In certain circumstances, DMP can impose penalties or require further action be taken in relation to tenure conditions.

Mines operating under State Agreements are not required to participate in the Fund, although the legislation allows them to sign up. None of the operations under the 29 State Agreement operations clearly involved in mining have so far joined up.

As was the case before the Fund was introduced, there are a number of protections in place over State Agreements, but there is no single financial protection against poor rehabilitation. Operators of these mines are required to rehabilitate their sites and State Agreements generally require them to meet best practice, but are not specific on how that should happen. Also, bonds are generally held by the Minister against poor performance. The risk to the State from this situation has not changed since our audit in 2011.

We note that State Agreement Acts can only be amended with the agreement of the companies involved, and that any move to bring miners under State Agreements into the Fund will require careful planning on a case-by-case basis. However, given that State Agreement sites contain many large scale mines, their absence considerably lessens the amount that could be paid into the Fund and the interest that could be earned to act on abandoned sites. Also, State Agreement site disturbance information is not included in EARS2, and therefore the State loses information and knowledge about large mines.

The Department of Environment Regulation has established a public online register to track environmental offsets

Although the mining approvals process is designed to minimise the risk of environmental damage from mining, in some cases significant impacts will result no matter what avoidance, minimisation and rehabilitation efforts are made. In those circumstances and if the social, economic or industrial benefits of a project are deemed necessary, government can establish an arrangement to 'offset' the impact.

At the time of our last report there was no centralised or coordinated understanding of the number of environmental offsets in place, whether they had been carried out successfully, or if the desired outcomes had been met. Nor was there a formal government policy position on offsets, although one was in draft.

In September 2011, government released a formal environmental offsets policy. One aim of the policy is to ensure that offsets are 'applied in specified circumstances in a transparent manner to engender certainty and predictability'. The policy outlines six principles for the use of offsets. In practical terms, the policy called for two supporting actions: the creation of detailed guidelines outlining the respective roles and responsibilities of agencies, proponents and statutory bodies, and the establishment of a centralised public record of all offset agreements.

The centralised public record was developed in 2012, and was launched in August 2013. It currently holds information on 84 sites with environmental offsets. It is administered jointly by DER, DMP and the Office of the Environmental Protection Authority (OEPA). It is searchable, and provides a reasonable level of information on each offset arrangement, although this could be enhanced in future. There are comprehensive policies and procedures supporting the register, including an Administrative Agreement between DER and DMP.

DMP is an administrator of the register for all offsets established through its delegated powers under Part V of the *Environmental Protection Act 1986*. DER manages offsets under the same legislation, and is responsible for the greatest number of offsets. The OEPA is responsible for information about offsets permitted under Part IV of the same Act, and deals with the largest projects. DER and OEPA are developing a Memorandum of Understanding that will in part deal with the register.

In time, the register will provide information on all offsets in the State. Currently the register includes information on offsets granted or active after August 2013. DER has a project to record the details of 44 offsets created between 2011 and 2013 by January 2015. We recognise that there are resource implications in bringing historical or pre-2013 information onto the register.

DER is currently reviewing how well the providers of the offsets that it approved are complying with their obligations. We note that DER offsets generally do not involve mining activity. The OEPA has established 20 offsets on the register. It reported that it reviewed activity across 60 projects, and identified full compliance at 87 per cent of sites. It also reported that 92 per cent of non-compliant activity was rectified. DMP has recorded eight offsets on the register, relating to native vegetation clearance of 160 hectares. Six of these involve sand mining or limestone quarrying.

Part of the purpose of the register is to track when operators have fulfilled their obligations to the State, whether by funding land purchases, funding research, or other actions. Presently material is updated in the register when the administering agency receives information that these conditions have been met, or the situation has changed. This includes when operators provide annual or other required reports.

Users of the register can search it in many ways, including the name of the project, site, operator, the type of offset, the piece of land, or any relevant permit number. The register provides reports and spreadsheets of these searches. When looking at an individual case, it shows the details of each offset condition, and its current status. These details include the amount of any land that is to be set aside, or purchased, and the type of land or environmental quality that is included. They also include any financial imposition or method of calculation.

There is a defined if complex process for funding land purchases under offset arrangements. Funds received by DER for land offset purchases are held in a special purpose account. Currently this account holds \$3.7 million. DER writes to the Department of Parks and Wildlife (DPaW) advising of the availability of funds for the purchase and management of land to establish and maintain vegetation that contains specific environmental values. In response, DPaW provides information on the environmental values of potentially suitable sites available for purchase. This information is assessed by DER and if the proposal aligns with the environmental values that were impacted, approval for the transfer of funds to DPaW is sought from DER's Director General. Once approved, payment to DPaW is processed.

There can be a considerable lag between operators providing money and DPaW purchasing land, which can diminish transparency. It would improve the transparency and accountability of both government and proponents if the register recorded the combined amount of funds provided for offsets, and if it identified the amount and location of land that had been purchased.

The WA Environmental Offsets Guidelines were released in August 2014 and outline the respective roles and responsibilities of agencies, proponents and statutory bodies; legislative requirements; assessment and decision making processes, auditing, monitoring and review. They call for a review of aspects of identifying offsets by August 2015.

There is better oversight of mines with Aboriginal heritage sites, but the Department of Aboriginal Affairs needs to complete system improvements

DAA has made some significant improvements since 2011, especially in regard to its audit and inspection of mining sites issued with permits under the *Aboriginal Heritage Act 1972*. But these improvements need to continue. This is particularly important as wide-ranging changes to the Act are expected in the near future.

DAA has increased its audit and inspection regime. In 2011 there had been practically no audits or inspections. Now the department expects to carry out 60 audits annually, 30 of which will focus on permits issued under s18 of the Act. This effort is in part resourced by the appointment in 2011 of two compliance officers. Site inspections are also carried out by staff at the department's six regional offices.

In May 2014 the department also introduced a new IT system, the Aboriginal Heritage Electronic Lodgements Program (AHELP) that tracks applications from submission through to Minister's consent. The system deals with all Aboriginal heritage sites, not just those on mining sites. This has streamlined the process of submitting and assessing statutory submissions. However, AHELP does not track an operator's compliance with Aboriginal heritage requirements throughout the life of a project. Minor system and work-flow changes to enable this would enhance DAA's oversight of all sites.

AHELP tracks 'active' s18 applications through to Ministerial consent. Once consent is given they are considered to be 'inactive'. The system is not used to monitor whether permit holders have reported on their activity as required and does not identify which projects are complete. Therefore AHELP cannot report the number of live s18 permits with conditions, or the number that have or have not complied with report back conditions.

Since 2011 DAA has improved monitoring of applications and permits. Section 18 consents with report back conditions should now be electronically flagged to ensure follow up. We found that this process relies on particular staff adding 'bring-up' dates to the record management system. Cases only re-enter the AHELP system after operators fail to reply twice to follow-up letters. This manual double handling increases risk, and fails to utilise the full benefits of the AHELP system.

The AHELP system cost \$2 million to introduce but could be improved to track permits from application through their operational phase and into any audit or compliance activity. DAA has agreed to implement these practice and process changes.

DAA expects that wide-ranging amendments to the *Aboriginal Heritage Act 1972* will come before Parliament soon. In part these amendments would increase the power of the Director General to decide on applications regarding heritage sites. In addition it will include fast-tracking of some approvals and substantially increased fines and penalties for non-compliance. Improved information control will be important to manage these changes.

Auditor General's Reports

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19	Purchasing Through Common Use Agreements	12 November 2014
18	Audit Results Report – Annual 2013-14 Financial Audits	12 November 2014
17	Opinions on Ministerial Notifications	25 September 2014
16	Our Heritage and Our Future: Health of the Swan Canning River System	13 August 2014
15	Working with Children Checks	30 June 2014
14	Information Systems Audit Report	30 June 2014
13	Royalties for Regions – are benefits being realised?	25 June 2014
12	Government Funded Advertising	25 June 2014
11	Licensing and Regulation of Psychiatric Hostels	25 June 2014
10	Universal Child Health Checks Follow-Up	18 June 2014
9	Governance of Public Sector Boards	18 June 2014
8	Moving On: The Transition of Year 7 to Secondary School	14 May 2014
7	The Implementation and Initial Outcomes of the Suicide Prevention Strategy	7 May 2014
6	Audit Results Report – Annual 2013 Assurance Audits (Universities and state training providers – Other audits completed since 1 November 2013)	7 May 2014
5	Across Government Benchmarking Audits – Controls Over Purchasing Cards – Debtor Management – Timely Payment of Invoices	1 April 2014
4	Behaviour Management in Schools	19 March 2014
3	Opinion on ministerial decision not to provide information to Parliament about funding for some tourism events	18 March 2014
2	Charging Card Administration Fees	12 March 2014
1	Water Corporation: Management of Water Pipes	19 February 2014



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