



Transparency in environmental regulatory decisions within the Department of Mines and Petroleum

Introduction

The Department of Mines and Petroleum is the state's lead agency for regulating mining, petroleum, and geothermal activities in Western Australia.

A key regulatory function of the department is to ensure that environmental impacts associated with resource development projects are minimised, and that environmental protection practices employed by the resources industry reflect the expectations of the Government and the community.

In its role as an environmental regulator, the department has continued to refine its processes in order to deliver predictable, reliable and timely regulatory decisions. Nevertheless, evolving community attitudes and the associated impact of government policies and legislation, has placed increasing pressure on the resources sector and the department to continue to improve its performance, particularly the department's regulation of activities that may have adverse environmental impacts.

As the department continues to improve its processes, there is a need for a strategic approach to how the department reports and makes available information relating to the regulatory decisions it makes; particularly those relating to environmental approvals.

Already the department has been delivering improved transparency arrangements across its approvals processes, such as online tracking and performance reporting, resulting in improved performance outcomes for industry, Government and the community. In addition, the Department is continuing to review its established protocols and agreements with other State and Commonwealth agencies to deliver effective and consistent assessments and decision making around mining, geothermal and petroleum projects.

The department has prepared this strategy paper to guide how it will further evolve its transparency arrangements within its environmental regulation functions.



The further expansion of transparency to environmental regulatory decision-making processes could significantly increase the time and cost of making decisions. Therefore the benefits to be gained by any changes to the decision-making process will be carefully weighed against the costs to Government, industry and the community.

The intent of this strategy is to define those factors DMP will take into account in making any future changes.

The scope of this strategy

This strategy aims to guide the future improvements to transparency arrangements for regulatory decisions relating to environmental approvals administered by the department. For the purposes of this strategy, “regulatory decision-making” is specific to those decisions made by the Government in exercising authority established under legislation covering mining, petroleum and geothermal activities.

Guiding principle for transparency

The department will pursue for environmental regulatory decision-making the level of transparency that can cost-effectively achieve the objectives of improving:

- 1) the quality of decision-making and
- 2) the capacity for individuals to be informed about decisions which may affect them.

The specific decisions on which transparency practices to adopt, and in what circumstances, will be based upon consideration of the criteria described in this strategy paper.

The options for transparency arrangements in DMP

There are different practices which the department could consider to improve the transparency of environmental regulatory decisions. However, the department proposes to adopt practices from the following options:

- making publicly available the criteria and process that will be used by the regulator in decision-making (e.g. by publishing guidelines on the DMP website),
- making available details of applications and non-confidential supporting documents,



- making available details of conditions of authorisations issued,
- publishing summary information relating to decisions (i.e. not the details for an individual decision),
- making available annual reports on the environmental performance by operators/tenement holders.

The department will assess each category/activity and determine appropriate options based on the criteria below.

Criteria against which transparency options will be assessed

In determining which transparency practices to adopt within the environmental decision-making process, the department will consider the following criteria:

1. Fit within the controlling legislation

The department makes a large number of regulatory decisions on a daily basis in its administration of environmental approvals relating to mining and petroleum legislation. Many of these decisions involve exercising statutory powers, and have no consequence beyond specific individuals (an example of this would be the change of tenement holder contact details).

The department intends to apply transparency measures around decision making where there is the potential for significant environmental impact.

2. Improving the quality of the decision

One of the principles being pursued by the department is to effectively improve the quality of the regulatory decisions that it makes.

For decisions which are administrative in nature, increased transparency may not lead to improved quality of decision making. However in very complex matters, increased transparency may result in a more comprehensive statement on the material that was considered in reaching the decision.

From time-to-time decision could be audited by an expert panel to ensure there is quality advice and consistency in the decisions.

The nature and extent of information made publicly available will depend upon the circumstances, however in general, the department will pursue transparency mechanisms where there is a significant potential to improve regulatory decisions.



3. Public interest

The department recognises its role to inform and improve the level of understanding in the community and industry of developments and progress.

Where there is broad public interest relating to an area of environmental approvals administered by the department, it may be appropriate to ensure measures exist to inform the public of the decisions.

A level of broad public interest may not relate specifically to elevated environmental risks, but may reflect areas of decision-making that attract strong, divergent community opinion.

4. Potential for wider benefits

Some of the regulatory decisions made by the department have the potential to deliver benefits beyond the party directly affected by the decision.

These include regulatory decisions that demonstrate the expected Government standards to better inform industry and the community.

As an example, decisions by the department to reject applications (and the reasons why) would inform other applicants of the circumstances when applications may be rejected. Other examples include enforcement action by the Department which acts as a general deterrent.

Where there is a clear benefit that may be achieved through greater awareness, the department will preference disclosure of these decisions.

5. The cost of any specific transparency measure

The adoption of additional transparency practices may result in immediate direct and indirect costs to the department and industry.

For example, direct costs could include the costs of developing and/or maintaining additional computer systems, advertising and publication costs, additional staffing requirements and the costs of establishing and maintaining administrative systems.

Of equal importance is the indirect cost that will primarily include the loss of opportunity associated with delays in regulatory decisions (i.e. the approval being granted). It is likely that some delays in the approval process will be unavoidable with the inclusion of additional transparency processes. These lost opportunity costs will be borne by industry (in the delay of commercial operations achieving financial return) and Government (in the delay of revenue being received).

The department will avoid implementing transparency measures that have a high cost (direct or indirect) in favour of those that have a low cost burden.



The department will also consider opportunities for industry operators to deliver transparency measures before the department becomes involved (e.g. evidence of stakeholder consultation and outcomes).

6. Existing transparency arrangements

When determining the appropriate transparency measures relating to environmental regulatory decisions, the department will take into account the existing arrangements that are already in place and not duplicate existing system. This is particularly the case where mining and petroleum activities require approvals under legislation administered by other agencies.

As examples, there are measures that are required for public consultation for activities requiring approval under the *Environmental Protection Act 1986* (e.g. Part IV approvals, native vegetation clearing permits).

7. Commercial and/or confidentiality issues

The department will not disclose as part of its transparency practices any information that is commercially sensitive or confidential, and will ensure that information release occurs in accordance with statutory obligations.

Operators within the mining and petroleum industries often provide information to the department that is commercially sensitive. This particularly relates to financial information (e.g. financial provisioning for mine rehabilitation).

The department is acutely aware of the potential for information which it receives as part of its environmental regulatory functions to be confidential or of a commercially sensitive nature. This includes information which may not immediately appear to be commercially sensitive.

In continuing to pursue transparency practices, the department will consider ways to address the aspects of commercial and/or confidential information through measures such as:

- having companies to separate in submissions confidential and commercially sensitive information from other environmental information (e.g. disturbance areas for exploration are reported not the detail of exploration activities).
- delaying the release of information (and/or notification of decisions) for a period of time so that the likelihood of the information remaining commercially sensitive after this period is reduced (e.g. five years)
- ensuring that only information required by the department to administer its statutory obligations is requested from companies



8. Statutory obligations

This strategy has been prepared in consideration of the Objects and Principles of the *Freedom of Information Act 1992* to facilitate public access to environmental information held by the department promptly and at the lowest reasonable cost.

However the legislation administered by the department establishes obligations and limitations relating to the release of some information.

The department will implement transparency practices in accordance with all statutory obligations. Where the existing statute is inconsistent with the objectives of transparency for environmental regulation, the department will recommend to Government that legislative changes are considered.

The department will continue to process applications made under the provisions of the *Freedom of Information Act 1992*.

9. Prejudicial material

There will be circumstances where material received or generated by the department will be sensitive and which, if made publicly available, could undermine the integrity of the regulatory process. These circumstances will usually relate to applications or documents which may be part of ongoing investigations.

Any transparency arrangements that the department pursues will be established so that the public availability of information does not undermine the integrity of administration or enforcement of legislation.

10. Legislative responsibility and harmonisation

The department undertakes administrative and regulatory activities which are governed by legislation that is the responsibility of other portfolios. For instance, the department administers through agreements Commonwealth legislation relating to offshore petroleum regulation. Further, the department approves Native Vegetation Clearing Permits under delegation from the *Environmental Protection Act 1986 (WA)*.

For these regulatory processes, if the department considers any changes to transparency arrangements are needed, it will pursue these by making recommendation to the appropriate Minister (State or Commonwealth). It is acknowledge that aspects such as harmonisation with other agencies implementing the same legislation will be a further factor that the responsible Minister will need to consider.



Specific transparency measures proposed

The department proposes to continue reviewing its regulatory functions and introduce appropriate transparency measures in accordance to the criteria detailed in this strategy paper. Transparency practices for environmental regulation in the department will be based on consultation with the resources industry and stakeholders to ensure that the proposed measures are effectively aligned to the desired principles.

However, as a general guide, the department will consider the following transparency measures in the coming years as the processes continue to be reformed.

Applications for works

The department processes applications for works separately to the granting of the tenure applications. This includes programmes of work, mining proposals and native vegetation clearing permits for mineral tenements, and environmental management plans for petroleum tenements.

As the nature of environmental regulatory decisions for works on tenure vary substantially, the transparency practices considered for implementation will be determined for each process against the criteria described in this strategy. The department does not propose to implement the same transparency and reporting practices across all its approval processes for all circumstances.

For the regulatory processes relating to applications for works on tenure, the department will generally make publicly available guidance material detailing the decision-making criteria, and will undertake regular performance reporting of quantity and timeliness of decisions.

Where the nature of the specific regulatory decisions (when considered against the criteria) warrant, the department will pursue the following measures:

- publishing details of decisions (such as decision reports),
- publishing details of applications received/approved by the department.

Reports by tenure holders required by the department

The department requires through its regulatory role that operators (including tenure holders) provide specific reports to the department (e.g. annual performance reports, specific monitoring reports).

Where the department requires reports to be produced by operators as a result of statutory obligations or requirements of condition of authorisation, the department will preference that these are made publicly available. The processes, timing and



nature of reports released by the department will be determined through consultation with the industry taking account the criteria detailed in this strategy.

Annual reports from tenement holders published by the department would not include commercially sensitive or confidential material.

Enforcement actions taken

One of the principles within the department's Enforcement and Prosecutions Policy is the extent to which the specific enforcement action will act as a general deterrent to the regulated community. As a result, the department will preference that the specific nature of enforcement action taken by the department is made publicly available.

As a default, the department will report enforcement actions which involve prosecution or the imposition of fines.

General correspondence

As a default, the department will not make publicly available general correspondence between it and industry operators.

Documents already held by the Department

If the department intends to implement any changes to making information/documents available, this will only apply to documents received/created after the endorsement of the new arrangements. In each circumstance the department will consult with industry and stakeholders on any retrospective application of transparency arrangements (in addition to ensuring that statutory obligations are followed).