



Western Australian Auditor General's Report

Ensuring Compliance with Conditions on Mining

Report 8 – September 2011





**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

ENSURING COMPLIANCE WITH CONDITIONS ON MINING

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
28 September 2011

Contents

Auditor General's Overview	4
Executive Summary	5
Background	5
Audit conclusion	7
Key findings	7
Recommendations	9
Response from Department of Mines and Petroleum	10
Response from Department of Environment and Conservation	10
Response from Department of Indigenous Affairs	11
Response from Department of State Development	11
Response from Office of the Environmental Protection Authority	12
Audit focus and scope	13
Legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions	14
Mining activities are covered by multiple pieces of legislation	14
Responsibility for regulating mining is dispersed across many agencies	16
Current practice does not provide overall assurance on compliance with conditions	17
Agencies have to balance competing responsibilities	17
Financial returns are well managed, but some economic and social returns are not well monitored and enforced	18
DMP is effective in making sure that the State receives the required royalties from mining companies	18
The monitoring and reporting of environmental offsets is inadequate reflecting the absence of clear policy and resulting in a lack of transparency	19
DSD now tracks the use of local content under State Agreements, but it is not clear that companies are meeting their obligations to maximise local content	21
DIA has not effectively monitored or enforced compliance with conditions under the <i>Aboriginal Heritage Act 1972</i>	22
Monitoring and enforcement of environmental conditions needs significant improvement	24
Annual Environmental Reporting is not effectively monitored or used increasing the risk that breaches of conditions may go undetected	24
OEPA reviews reports on compliance with Ministerial conditions	25
DMP's inspection regime does not deliver adequate assurance that mines meet their conditions	26
DMP has an appropriate approach to environmental enforcement but it needs refining	29
There is a risk that poor compliance will not be detected on all State Agreement sites	31
The State is currently exposed to potentially high financial risk if operators do not meet rehabilitation and mine closure conditions	32
Financial securities held against poor end-of-mine outcomes account for less than 25 per cent of potential rehabilitation costs	32
Stronger requirements for closure and rehabilitation planning have been introduced, partially mitigating the risk to the State.	33

Auditor General's Overview

The mining industry is central to the economy of Western Australia. In 2010-11 the industry generated nearly \$5 billion in royalties. It employs thousands of people directly, and its impacts reach across the life of the State.

Developing and regulating the mining industry requires striking an often difficult balance between apparently conflicting interests. Government has to attract new investment and encourage growth at the same time as placing conditions on mining intended to deliver appropriate financial returns, maximise social and economic benefits, and protect the environment.

How agencies regulate mining has been the subject of ongoing attention from both my Office and within Government. Agencies have been making progress in a number of areas, particularly changes to the project assessment and approvals process which I reported on in 2008. Ensuring compliance with conditions on mining has not received the same level of attention.

The project assessment and approval process is critical to the State, but so too is knowing and ensuring that the conditions placed on mining projects are being met. Without effective monitoring and enforcement, the State risks losing financial, economic and social returns and gaining potential long term liabilities.

Parliament can be assured that the State is receiving the agreed financial returns from mining. Government is also progressing improvements in how environmental offsets and financial securities are managed. But, there are weaknesses in how other social, environmental and economic conditions are monitored and enforced that need to be addressed if Parliament is to be assured that all the State's interests are being protected.

Executive Summary

Background

Mining natural resources underpins Western Australia's economy and development. The mining industry directly employs 70 000 people (around six per cent of the State's workforce). Mining and petroleum generated \$4.9 billion in royalties in 2010-11, up from \$3 billion in 2009-10. Mining is often a main economic and social support for towns and regions bringing jobs, infrastructure investment and development, and broader social benefits. Forecasts are that mining activity will increase in a sustained manner in coming years.

The mining industry in WA is much larger than in other Australian states and territories, and the types of commodities mined are diverse. WA has over 960 mine sites, and over 60 operating oil and gas fields. WA's 5 764 mining leases cover 2.125 million hectares, equivalent to one-third the area of Tasmania.

As well as generating benefits, mining also has risks. Specifically, mining has a direct and unavoidable impact on the physical environment. If conducted in accordance with best practice and well regulated, the impact of mining can be mitigated and the risks to the State minimised. Poorly conducted and regulated mining, however, can have serious and long term consequences. As a result the State can inherit significant rehabilitation costs.

State agencies are tasked both with encouraging development and the expansion of the mining industry and minimising the impacts and risks. WA operates in a competitive environment in attracting mining investment. The administrative framework for mining can directly affect investment decisions and mine viability. To balance these objectives, the State has set up a system of regulation to scrutinise and assess mining proposals, place conditions on them when granting approval and to monitor and enforce those conditions.

Companies must apply for permission to mine resources. When applications are approved, the State sets a range of conditions that must be met. These aim to deal with the risks and impacts presented by the proposed mine and associated activities. The specific nature of the conditions will vary depending on the characteristics of the proposed mine. In general they seek to ensure that:

- the State receives appropriate financial returns through royalties and rents
- wider economic benefits accrue through the use of local companies and labour
- environmental impact from mining is minimised
- if there is environmental impact that cannot be mitigated there is an offsetting return to the State
- Aboriginal heritage is preserved
- the State is protected from the risk of long term liability when a mine closes through effective rehabilitation and financial arrangements.

Following the assessment process, approval to mine will generally be provided in one of two ways, both of which will contain conditions with which the operator must comply:

- For projects that are approved under the *Mining Act 1978*, the operator will be granted a mining tenement which represents the physical boundaries within which they can mine. The conditions which apply to that tenement and operation are then usually contained in an approved mining plan to which the operator must adhere.
- For very large scale projects, and/or those that require major additional infrastructure like railways or ports, a specific Act of Parliament may be put in place. These are called State Agreement Acts, and contain specific conditions that operators must meet.

Agencies invest substantial effort to scrutinise and assess mine proposals and to formulate conditions for the mine's operation. For this system to be effective, and for the State to get the best balance of benefits and impacts, agencies also need to check that conditions are being met and take appropriate action if they are not.

A number of agencies are responsible under numerous pieces of legislation, regulation and policy for monitoring compliance with the conditions placed on mines. The Department of Mines and Petroleum (DMP), the Department of Environment and Conservation (DEC), the Department of State Development (DSD), the Department of Indigenous Affairs (DIA), and the Office of the Environmental Protection Authority (OEPA) all have key roles in regulating mining. The Department of Water (DoW), the Department of Planning, and local government authorities are also often involved.

We examined whether agencies are monitoring and enforcing conditions on mining effectively to provide adequate assurance that mining in WA meets the conditions placed upon it. The agencies involved were DMP, DEC, DIA, DSD and the OEPA.

We focused on four key questions:

- Are there clear legislated and regulatory powers to oversee and manage mining activities?
- Does the State receive the required financial, economic and social returns from mining?
- Does agency activity provide effective environmental protection?
- Does compliance with conditions relating to mine closure and rehabilitation minimise risk to the State?

Mine safety is also covered by the regulatory system, primarily through DMP. Substantial changes have been made in the funding and operations of this area recently, and we excluded it from our audit.

Audit conclusion

The legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions. However, the way agencies have implemented this framework means they do not provide assurance on the overall levels of compliance with conditions, or whether the conditions deliver the desired outcomes.

Responsibility for monitoring and ensuring compliance with conditions rests with several agencies, and performance varies significantly across these agencies, and across key conditions. Financial returns to the State are well managed but broader economic and social returns are not well monitored or enforced. Weaknesses in agency practice mean that we cannot give assurance that environmental protection conditions are being met.

Currently, the State has only limited financial security against the risk of operators not adequately rehabilitating mines. To address this risk the State is reviewing both the financial bonds required from operators as well as rehabilitation planning requirements.

Key findings

Financial returns to the State are well managed. DMP ensures that royalties and rents are received as required.

The monitoring and reporting of compliance with environmental offsets is inadequate:

- While some agencies monitor their own offsets, there is no clear record of how many offset agreements the State has entered into, what it should be receiving and whether the offsets are being fulfilled.
- Government is currently developing a formal offsets policy, and has been for a number of years. In the meantime a number of agencies have been and continue to enter into agreements without any clearly defined supporting policy on what is acceptable as an offset and how they should be reported.
- A lack of approved Government policy and effective monitoring and reporting of offsets causes poor transparency and accountability and a risk that offsets are seen as a means to buy project approval or extract money from proponents.

DSD has responded to a recommendation in our 2004¹ report on State Agreement Acts and now tracks local content achieved by State Agreement projects. However, DSD could do more to assess whether the levels achieved show that companies have met their obligations under the Acts to maximise local content.

DIA has not effectively monitored or enforced compliance with conditions on mines under the *Aboriginal Heritage Act 1972*. As a result, heritage sites may have been lost or damaged without the State knowing or acting.

¹ OAG, 2004, *Developing the State: The Management of State Agreement Acts*: www.audit.wa.gov.au/reports/pdfreports/report2004_05.pdf.

Monitoring and enforcement of environmental conditions need significant improvement. Currently, agencies can provide little assurance that the conditions are being met.

- Annual environmental reporting is not effectively managed or used:
 - Only 55 per cent of sampled operators submitted their required Annual Environmental Reports (AERs) to DMP to provide regular information on whether they are minimising their impact on the environment.
 - When the AERs were not submitted, DMP rarely followed up with the operator or took action.
 - DMP rarely reviewed the AERs it received. This increases the risk that poor practice and breaches of conditions will not be detected. Failing to analyse the information in AERs also reduces the effectiveness of DMP's inspection program.
- DMP's inspection regime does not deliver adequate coverage or assurance that mines meet their conditions:
 - DMP has not determined the extent of inspections needed to provide reasonable assurance that mining conditions are being met. Forty-three per cent of sampled mines were inspected over the five years to 2011.
 - DMP has introduced a risk assessment system to plan inspections, but it needs improvement to ensure effective use of resources.
 - DMP needs to improve controls over its inspections program to ensure consistency and quality. Mandatory inspection criteria are not used, senior management do not consistently review and approve inspection report findings and required actions, and feedback to operators is often not timely.
 - DMP identified 10 cases of 'major' non-compliance, 13 'moderate' and numerous instances of minor non-compliance in 2009-10. However, DMP's monitoring and compliance information was not reliable.
- Significant weaknesses in information management make it difficult for DMP to analyse and demonstrate the effectiveness of its inspections, or report accurately on how well operators comply with conditions. Information that is kept is inconsistent and the systems used to manage information are inefficient.

DMP's approach to enforcing environmental conditions is to take the minimum action required to obtain industry cooperation and compliance. While this can be effective, there are weaknesses which need to be addressed:

- There are no clear established criteria for determining the severity of non-compliance. This is left to the judgement of individual inspectors which risks inconsistency in how non-compliance is addressed.
- DMP's monitoring of whether mining operators have taken action to address identified non-compliance is poor.

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.

Stronger requirements for mine closure and rehabilitation planning have been introduced to reduce the risk of poor end-of-mine outcomes. However, the State is still exposed to significant financial risks:

- From 1 July 2011, all new mines need a costed rehabilitation plan. Existing mines will have to comply with this by 2014.
- Financial securities held by the State against poor environmental outcomes account for only 25 per cent of estimated total potential rehabilitation costs. Options to reduce this exposure are being considered with a decision on the preferred option expected in 2011.

Recommendations

Government and agencies should:

- Finalise policy arrangements for environmental offsets to ensure transparency in their application and monitoring.
- Resolve and formalise arrangements for monitoring and enforcement of conditions on State Agreement Act projects.
- Finalise changes to arrangements for mine closure financial securities to reduce financial risk to the State.

DIA should ensure that mining operators comply with conditions under Section 18 of the *Aboriginal Heritage Act 1972*. This will include conducting adequate monitoring and inspections.

DMP should:

- Improve processes for monitoring and inspection of compliance with environmental conditions, specifically:
 - determine base levels of environmental monitoring and inspection required to provide adequate assurance about compliance with conditions
 - ensure that it reviews and assesses Annual Environmental Reports as they are received
 - formalise review and approvals procedures for inspection reporting
 - finalise risk assessment processes for inspection planning.
- Collect and analyse information on all non-compliance, and report it appropriately. This will include introducing the full post-approval capabilities of its data management system.

Response from Department of Mines and Petroleum

DMP acknowledge the report findings and the framework it provides for strengthening DMP's compliance systems. Work has commenced on improving its compliance risk based methodology and records management to provide greater assurance that mining conditions are being adhered to.

The report comments on the adequacy of mine closure financial securities, however, it does recognise that DMP is on track to complete its review and policy approach to address this issue by the end of 2011.

DMP has been implementing a reform program which is aligned to the government's approvals reform objectives and priorities. Despite DMP's substantive and ongoing compliance inspection program, the focus has, until now, been on approvals, and this audit report provides an impetus for DMP to strengthen its compliance processes.

Response from Department of Environment and Conservation

DEC's role in the regulation of mining is one of advice to the Environmental Protection Authority (EPA) and the Department of Mines and Petroleum (DMP), setting of the policy framework for clearing regulated under delegation by DMP and regulating emissions and discharges from prescribed premises. DEC generally does not have direct responsibility for either approving mining or determining compliance with conditions of mining approvals.

In respect of the regulation of clearing, there are well established systems for the assessment of applications, and the monitoring and compliance of conditions, including offsets. The WA Environmental Offsets Policy, which has now been approved by the Ministerial Taskforce on Approvals, Development and Sustainability, foreshadows the development of supporting guidelines and a public offset register.

DEC supports the findings regarding the management of offsets and that adequate monitoring of compliance with conditions on mining is important to ensuring protection of the environment. The offset guidelines and register will improve transparency and accountability.

Response from Department of Indigenous Affairs

The Department of Indigenous Affairs (DIA) readily acknowledges the challenges of comprehensively monitoring industry compliance with *Aboriginal Heritage Act 1972* (AHA) approvals related to mining operations.

The prioritisation of the Department's resources has been focused on site impact avoidance through the provision of heritage information to mining proponents and the engagement of Aboriginal people with heritage knowledge of the area subject to a mining license working cooperatively with industry on the protection of sites of heritage significance. This approach is consistent with the heritage management practices arising from the Commonwealth *Native Title Act 1993* (NTA) which has significantly impacted upon the administration of the AHA.

In 2009 DIA commissioned a study into the establishment of a compliance unit within the agency, developed the compliance framework in 2010 and the unit became operational in April 2011. DIA has now resourced and improved its compliance management systems for monitoring conditions and reporting. DIA has instigated a major reform of the agencies information systems that will allow for the on line tracking of approvals and compliance and improved accuracy of spatial data relevant to site identification.

DIA is also currently undertaking a total review of the AHA led by Dr John Avery following his appointment by the Minister for Indigenous Affairs in June 2011. This review is expected to report later in 2011 with clear and substantive recommendations for reform that will modernise the AHA with the realities of the operation of the NTA and its effect on the reporting and management of sites by Aboriginal people as traditional owners.

Response from Department of State Development

The Department of State Development notes the conclusions and recommendations of the 'Compliance with Conditions on Mining Report'.

It should be noted that the role of the Department of State Development and State Agreements, in general, is to facilitate the development of the Western Australian resources sector within the context of Government policy and the requirements of the State Agreements which set out the rights and obligations of the parties to the State Agreement. Projects developed under State Agreements are subject to, and are regulated by, the general laws of the land. State Agreements do not replace the laws of the land to regulate industry wide sectors.

In relation to the finding relating to local content, State Agreements do not provide a legislative power for the State to intervene in commercial processes by which companies award contracts to suppliers, nor would it be appropriate to do so. The local content provisions in State Agreements are aimed at providing fair and reasonable opportunity for local suppliers to tender for contracts. In early July 2011, the Minister for Commerce announced the Government's commitment to a 10-Step Framework for improving local industry participation in major projects.

The Department notes the comments relating to financial securities and will take them under consideration.

Response from Office of the Environmental Protection Authority

The OEPA recognises the need to improve consistency and transparency in relation to monitoring and reporting of compliance with environmental offsets. The development of a WA Government environmental offsets policy and an associated register should help address many of these issues.

From a historical perspective, it should be noted that offsets have been used in the environmental impact assessment process for more than a decade. However, offsets are not applied to all development proposals, but to those where significant residual impacts remain for the State's environmental assets. It should also be duly noted that the EPA has been applying its own environmental offsets position statement since 2006 with further technical guidance provided in 2008.

More recently, the key focus of attention for the OEPA has been the policy and practice surrounding the application of environmental offsets. With the drafting of a State offsets policy this year, the Government has given clear direction to agencies about the need to improve governance, accountability, transparency and consistency in this area.

The EPA has also responded by taking a greater interest in offsets and expressing a view as to the merits or otherwise of various offset proposals, and ensuring they are documented in EPA reports and are the subject of recommended conditions so they can be properly audited for compliance. These steps should help to ensure the Government's transparency and accountability goals are met and result in more consistent application of the policy principles.

Audit focus and scope

This audit examined whether the monitoring and enforcement activities of key agencies provide adequate assurance that mining in WA meets the conditions placed upon it.

We focused on four key lines of inquiry:

- Are there clear legislated and regulatory powers to oversee and manage mining activities?
- Does the State receive the required financial, economic and social returns from mining?
- Does agency activity provide effective environmental protection?
- Does compliance with conditions relating to mine closure and rehabilitation minimise risk to the State?

We focused on productive mining, and excluded exploration, prospecting, and offshore oil and gas activity. The audit did not question the quality of conditions placed on mining; it took approved conditions as a starting point and then assessed how the State ensured they were met. The scope of the audit excluded mining safety, as there have been extensive recent changes to the funding and regulation of this area.

We tested records, processes and activities at DMP for 71 mines, from a population of 680. (We note that the number of 'mines' varies from about 600 to about 1 000 depending on the definition. Information on the 680 sites was provided by DMP.)

In conducting this audit we interviewed staff from DMP, DEC, DSD, DIA and the OEPA. We reviewed legislation, policies, files and agency documents. In addition, we observed field inspections and sought the views of mining industry and environmental stakeholders.

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

Legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions

Mining activities are covered by multiple pieces of legislation

The regulatory framework around the mining industry has been established over time. It is a large and complex industry, and there are numerous agencies and pieces of legislation involved. Some of the legislation is specific to mining while other Acts cover mining activities as part of a broader scope. There are also individual Acts of Parliament that enable and manage specific mining projects (State Agreement Acts) (Table 1).

The regulatory framework includes:

- the *Mining Act 1978* (Mining Act) is the central legislation. It regulates financial and technical mining activities and impacts. Mine Safety is dealt with by a separate Act, the *Mines Safety and Inspection Act 1994*. We excluded mine safety from this audit, given significant recent changes in that area.
- the *Environmental Protection Act 1986* (EP Act) – parts of this Act regulate the impact of mining on the environment.
- the *Aboriginal Heritage Act 1972* (AH Act) – requires operators to plan and act appropriately when there are sites with Aboriginal heritage value affected by the mine.
- water resources and planning – although outside our audit, legislation covering these regimes (especially when near population centres) apply to mining as they do to a range of other activities.
- State Agreements – some major mining projects have been established using individual State Agreement Acts. These Agreements outline specific development details, including access and royalty rates. State Agreements are contracts between the Government of Western Australia and proponents of major resources projects which are ratified by an Act of the State Parliament. There are 45 operating State Agreements, 26 of which are mining or mineral processing projects. These are governed by the *Government Agreements Act 1979*. These cover the largest mine sites in Western Australia and account for about 70 per cent of mining royalties paid to the State.

Legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions

Act	Administering agency	Key activity	Contributing agencies
<i>Mining Act 1978</i>	DMP	Royalties, rents, bonds, environmental assessments and inspections, land tenure	DEC DIA DSD EPA
<i>Mines Safety and Inspection Act 1994</i>	DMP	Safety in mining operations	
<i>Environmental Protection Act 1986 Part IV</i>	EPA OEPA	Environmental impact assessments (towards Ministerial conditions)	DEC DMP
<i>Environmental Protection Act 1986 Part V</i>	DEC DMP (native vegetation clearing)	Licences and approvals over emissions, air quality, noise etc	DMP DIA
<i>Aboriginal Heritage Act 1972</i>	DIA	Protect Aboriginal heritage sites	
State Agreement Acts (under <i>Government Agreements Act 1979</i>)	DSD	To facilitate large development projects	DMP DEC DIA EPA OEPA
<i>Conservation and Land Management Act 1984</i>	DEC	To manage State reserved lands	
<i>Wildlife Conservation Act 1950</i>	DEC	To regulate the 'taking' of identified species	
<i>Rights in Water and Irrigation Act 1914</i>	DoW	To regulate access to water	
Various planning Acts and schemes	WA Planning Commission Local Governments	To regulate land development	

Table 1: Key legislation affecting mining in WA

The various Acts and agencies give broad coverage to regulating mining, but this poses challenges.

Legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions

Responsibility for regulating mining is dispersed across many agencies

DMP has the main responsibility for regulating mining in WA. The department sets, monitors and enforces royalties and rents, performance bonds and environmental conditions. These conditions can relate to managing mining waste, mineral processing by-products (known as 'tailings'), and mine rehabilitation. It also assists the EPA during assessments under Part IV of the EP Act. DMP has numerous divisions to assess project proposals and to monitor and enforce compliance with mining conditions, including the Environment Division and Royalties Branch.

DEC has a number of roles in ensuring compliance with mining conditions. Its Nature Conservation Division can be called to advise DMP and the EPA during Part IV EP Act assessments. It has a separate Environmental Regulation Division which administers Part V of the EP Act by approving, monitoring and inspecting licences including for emissions into the environment, air quality and noise. It also has a land management role under the *Conservation and Land Management Act 1984*, and administers the *Wildlife Conservation Act 1950*. Both of these can affect how mining is conducted to reduce its impact on the natural environment.

Since November 2009, the Office of the Environmental Protection Authority (OEPA) has monitored compliance with Ministerial conditions placed on projects under Part IV of the EP Act. Mining conditions arise when the EPA becomes concerned about the potential for significant environmental impact from mining and decides to conduct an environmental impact assessment. Recommendations from the assessment can include whether or not a project should go ahead and if so, with what conditions. The Minister can approve a project and impose Ministerial conditions.

DIA is responsible for administering the AH Act. This involves setting, monitoring and enforcing conditions under Section 18 of the Act. Under this section operators must ensure they take no action which is likely to interfere with or damage any Aboriginal site. DIA established a dedicated compliance unit in 2011. Government has decided to review the legislation to meet contemporary needs and bring it into line with other legislation including the Mining Act and the EP Act. DIA also assists the EPA during assessments of mining proposals.

DSD facilitates and administers State Agreements which set out the rights and obligations of the parties to each Agreement. However, it only monitors compliance with the specific obligations within each Agreement. This includes reporting on use of local content (services, material and labour.)

Legislation and powers are in place to enable agencies to monitor and enforce compliance with mining conditions

Current practice does not provide overall assurance on compliance with conditions

In general, responsibilities for regulation are clear. The legislation in Table 1 is clearly 'owned' by individual agencies. However, the way this framework is currently implemented does not provide overall assurance on compliance with conditions.

The dispersed approach means that no agency is responsible for providing assurance on overall compliance with conditions placed on mining. Rather, individual agencies report on aspects of their own activity and performance. For agencies other than DMP, mining is not their key activity and is not reported specifically. While DMP reports on mining issues, no agency reports on the overall compliance of industry, or on whether conditions provide the intended outcomes.

As well as spreading the requirement to provide assurance, the framework also creates the potential for overlap, repetition or gaps, and complicated processes for operators and agencies to navigate. Minimising these risks needs clear roles and responsibilities, effective coordination between agencies, sound internal processes and effective planning. Unlike the case in the approvals process, agencies are not required to inform other agencies about their individual compliance activity. There has been significant effort in recent years to improve the approvals process for mining projects. It has focused on clearing overlaps and duplication, and improving how information is shared. We reported on aspects of this effort in 2008.² Processes have been streamlined and clarified and there are now a number of formal agreements to share information between agencies. There are specific targets to measure the performance of and improvements in the approvals process. There has been no similar effort applied to the monitoring and enforcement of the conditions which the approval process spends time and money placing on mining projects.

Agencies have to balance competing responsibilities

We found throughout our audit that individual staff and agencies had separate roles competing for their effort. Individual staff had to assess project proposals for approval, as well as monitor and enforce compliance in existing projects. The same challenge faces agencies in balancing the use of resources between approvals and compliance. DMP has the parallel tasks of fostering the development of the mining industry, assessing and approving new projects and regulating their ongoing operations. DEC similarly provides advice on mining applications to the EPA while also approving and monitoring compliance with certain activities under Part V of the EP Act. DSD facilitates the creation of State Agreements, administers those agreements and ensures proponents and the State meet the requirements of those Agreements.

Agencies consider that assessing and deciding whether to approve projects is their key priority. This can impact on the extent of agency activity in monitoring compliance with conditions.

² OAG, 2008, Improving Resource Project Approvals: www.audit.wa.gov.au/reports/pdfreports/report2008_05.pdf.

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

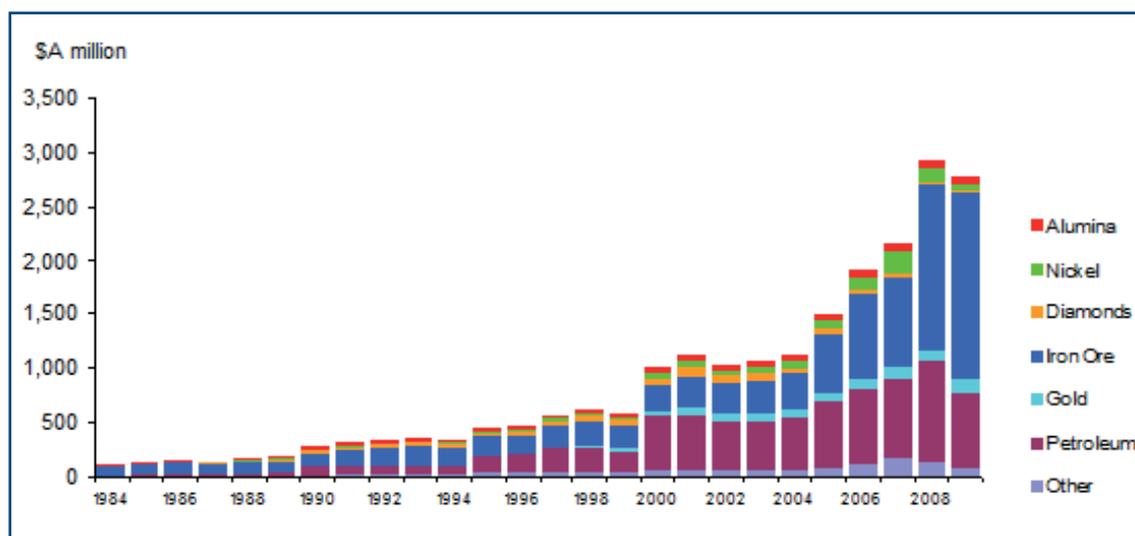
The State uses a range of conditions to generate financial, economic and social returns from mining. We assessed whether agencies are ensuring that the State receives the returns required for allowing access to resources. Specifically we reviewed agency monitoring and enforcement of compliance with conditions on:

- royalties
- offsets from projects on which environment impact cannot be mitigated but are deemed to be economically necessary
- the use of local content (services, material and labour) on State Agreement projects
- the management of Aboriginal heritage sites.

DMP is effective in making sure that the State receives the required royalties from mining companies

Resource royalties are a major revenue stream for the State. From 1984-2009 more than \$22 billion was paid in royalties from mineral and petroleum projects (Figure 1). In 2010-11 DMP collected \$4.9 billion; up from \$3 billion in 2009-10 and \$2.8 billion in 2008-09.

Our testing showed that DMP collected and audited royalty payments effectively. The system to ensure the collection of the required royalties was robust and comprehensive. We tested royalty payments for 71 mines that paid \$5.2 billion in royalties since 2006. We found the vast majority of royalty payments were made on time and appropriate action was taken where they were not. Follow-up emails for late payments were generally sent within seven days. The majority of late payments were reported as due to operators waiting to be paid for their products.



Source: DMP

Figure 1: Royalty payments by commodity

Royalties have increased dramatically over the last 25 years.

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

In our sample we found only one instance where a payment was excessively late. In this case the company had gone into receivership. The royalties branch sent a number of demands for payment. Following normal DMP processes, the tenement was blocked from being sold prior to payment. After following the case for over three years DMP received two-thirds of the amount due. The outstanding amount of \$146 000 was written off.

There are two main types of royalties paid to the State for its resources:

- ‘Specific’ royalties are paid on minerals at a set rate per volume or weight.
- ‘Ad valorem’ royalties are paid according to the price the materials are sold for.

The payment process is complex. Companies rather than individual mines pay royalties. Mines are often owned by more than one company, each required to pay proportionate royalties. Companies often have more than one mine for which royalties are payable. In turn these can involve more than one rate for the same material and more than one mineral type and royalty. Payments are based on self-assessment.

Royalties on mines that operate under the Mining Act are generally paid quarterly while individual periods and dates are set for royalties paid under State Agreements. We noted that during 2010 the government removed a historical discount on iron ore royalties for State Agreement operations. These discounts had been in place since the 1960s and early 1970s. The removal provided an extra \$350 million in 2010. Our 2004 report on the management of State Agreements recommended removing these discounts.

The monitoring and reporting of environmental offsets is inadequate reflecting the absence of clear policy and resulting in a lack of transparency

Not all risks associated with mining can be mitigated or avoided in preparation. Sometimes significant environmental impact will occur no matter what efforts are made. When the economic benefit of the project is considered to outweigh the level of environmental impact caused, proponents, regulators and government can seek to establish an arrangement to ‘offset’ the impact.

There are numerous examples of where the State has agreed to offset arrangements in response to significant environmental impacts arising from particular mining projects. However, the establishment of offsets is ad-hoc, and there is limited transparency and reporting of what offset arrangements exist and why and whether they have been delivered.

The lack of reliable information means we could not form an opinion on whether the process of agreeing and monitoring offsets is effectively managed. This situation is in large part due to the absence of formal policy to guide agencies and proponents on when and how to use offsets, who can approve them, what is acceptable as an offset, or how they will be monitored and reported.

Offsets are not part of the formal conditions approved under the Mining Act. They are decided apart from and often after this approval process. Individuals who agree to offsets on behalf of the State range

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

from Ministers to agency CEOs and sometimes senior agency staff. This situation contributes to there being inadequate records at a whole-of-government and even individual agency level of what offsets have been agreed to and why, who the parties are or whether the offsets were received.

There was insufficient clarity and transparency about offsets. This could lead to problematic perceptions. In particular, it increases the potential for offsets to be seen as either a way for agencies to extract returns from proponents or as a way for proponents to 'buy' their way past environmental impacts.

There are several types of offset:

- 'Direct' offsets involve operators providing a piece of land with similar conservation values or flora and fauna as the impacted site.
- 'Contributing' offsets can involve many things, but in each case should provide a benefit at least similar to the loss created by mining. Examples might include funding research or breeding programs for particular affected species or the funding of agencies to provide dedicated staff, materials or goods needed for conservation activity.

DEC, the OEPA and DMP advised that 34 environmental offset agreements were in place. However, they could not provide evidence to assure us that this included all the offsets in place, and advised that it probably did not. Further, it was not clear what offsets had been delivered.

There is no formal government approved policy on how, when, and why to set offsets. There are two pieces of guidance in this area, but neither has been officially adopted by government. The EPA produced an Environmental Offsets Position Statement in 2006, and Guidance for Offsets in 2008. The EPA considers that offsets are the 'last line of defence' and should only be considered after all steps have been taken to minimise impacts resulting from a development. Offsets should 'aim to ensure that any adverse impacts from development are counter-balanced by an environmental gain somewhere else'.

The Guidance does not provide clear direction or criteria to assist decisions. It is silent on how much effort or funding should be involved in any offset, on what is a legitimate offset, and on how a proposed offset should be assessed to be acceptable. The lack of this sort of guidance results in a risk that agencies may agree to offsets that match their immediate or individual needs but which do not meet broader needs or adequately offset the impact caused by the project. The OEPA advised that the diversity in the WA environment makes simple criteria difficult to design.

A formal policy on Offsets is currently being developed by a multi-agency committee. The policy is expected to identify criteria for when and what should be considered in setting and managing offsets. It is also expected to include the requirement for a central register of offsets. Implementation of the policy should address the transparency and accountability weaknesses that currently exist.

The need for an Offset policy was identified in 2009 by an Industry Working Group. Work on the policy began in 2010 but at the time of this audit the policy had not been announced.

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

DSD now tracks the use of local content under State Agreements, but it is not clear that companies are meeting their obligations to maximise local content

DSD is now tracking and reporting on the extent that operators of State Agreement Act projects awarded contracts to local suppliers (local content). DSD's first report on the use of local content was published in May 2011. The report found that:

- local content made up 61 per cent of relevant expenditure by operators to 2010
- 24 of 25 companies had reported their use of local content over the previous two years as required under their State Agreements. One company had not reported as required.

The Department requires companies to report on contracts valued over \$100 000. A contract is deemed 'local' if more than 50 per cent of its value was let in WA. The 61 per cent total figure in the DSD report included 53 per cent of construction expenditure and 86 per cent of operational expenditure in 2009-10. According to DSD this amounted to \$10.3 billion across all State Agreements to 2010. DSD informed us that this figure averaged \$970 million per annum for mining projects over the last four years.

DSD does not itself analyse whether the reported figure met the operators' obligation to maximise the use of local content. This is carried out by another agency. This agency follows up reported activity, and refers possible issues to DSD. DSD could, within its remit of ensuring proponents meet their obligations, go further but has not done so. It had not, for instance, asked companies to show that they had invited local bids for all reportable contracts. As a result, while tracking levels achieved provides a measure of the effectiveness of State Agreements in generating wider economic benefits, it is not clear that operators are meeting their obligations.

Generally, State Agreements require operators to make reasonable efforts to use services, workers and materials from Western Australia wherever possible on their projects. There are no set targets for local content, and until recently there has been little formal guidance to define acceptable activity. In mid-2011 the government released a 10-point Local Industry Participation Framework. The aim is to increase the broader economic returns to the State from mining. Operators have to report the results to the relevant Minister quarterly during construction or expansion, and annually during normal operation.

Only mining conducted under State Agreements has obligations to attempt to use or report on local content. Projects approved under the Mining Act have no such obligations.

In 2004 we reported that the then Department of Industry and Resources did not methodically monitor how well operators met State Agreement obligations to maximise local content. Consequently, it was difficult to demonstrate how effective these Agreements had been in encouraging the use of local labour, services and materials. We recommended that the Department actively monitor how operators discharged their obligations to maximise the use of local content.

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

DIA has not effectively monitored or enforced compliance with conditions under the *Aboriginal Heritage Act 1972*

DIA has not actively monitored if operators are meeting the conditions placed on them under the *Aboriginal Heritage Act 1972* (AH Act). This means that registered Aboriginal heritage sites could have been lost or destroyed without the State knowing or taking action.

As part of gaining approval to mine, proponents must meet the requirements of Section 18 of the AH Act. This Act aims to ensure that Aboriginal cultural heritage in WA is identified, managed and preserved. Some operators must develop management plans to protect identified Aboriginal heritage sites. These can be archaeological sites housing tools and rock art, or ethnological sites of spiritual, historical or other importance.

As part of administering this activity, DIA keeps a register of identified heritage sites; a register of agreed heritage plans; and a register of who must report against these plans and when. DIA has identified that there are more than 7 000 mining tenements which have heritage sites. About 800 tenements have Section 18 requirements.

We found that DIA has only undertaken inspections of heritage sites when responding to complaints it received, but has taken no enforcement action when it has found non-compliance.

Because DIA has not been actively monitoring compliance with Aboriginal heritage conditions, it does not know the actual incidence of breaches of those conditions. In the last two years, it received 28 complaints related to the impact of mining on Aboriginal heritage. Of these, 21 are either still being investigated or awaiting investigation. Three have been closed with no further action taken and one referred to the State Administrative Tribunal. Three could not be investigated because they were more than 12 months old. The complaints involved alleged removal of rock art, mining within a significant site, building infrastructure on a significant site and failing to appropriately liaise with traditional owners. Seven cases were self-reported by operators.

DIA did not review all compliance reports required from mine operators in a timely manner. Nor did it effectively follow up those who had not provided reports. Most reports were received late or not at all.

For instance, in 2009 the Minister approved (under Section 18 of the AH Act) 114 applications to develop land on which an Aboriginal heritage site existed. The proponents of 62 of these applications were required to report to DIA on progress and heritage issues but only 28 (45 per cent) have done so. This low level of reporting and the fact that DIA does not review all the reports it receives, reduces DIA's understanding of the levels of operator compliance with conditions.

Financial returns are well managed, but some economic and social returns are not well monitored and enforced

We also noted that DIA has not been inclined to take action on non-compliance with heritage conditions and that its legal capacity was somewhat restricted:

- DIA has consistently failed to follow up when operators have not submitted progress reports or taken voluntary corrective action when a Section 18 condition has been breached. Non-compliance with conditions could for example be an operator's failure to erect suitable fences to protect a heritage site or, actual damage to a site.
- DIA cannot pursue matters more than 12 months after they have occurred. Three cases in the last two years could not be acted on as a result of this limitation.
- DIA can only take formal action through the courts. It does not have authority to issue fines. However, it has the power to issue warnings and directions, but has not used these powers.

In 2010 DIA began planning for regular inspections. It has filled two permanent positions to operate a compliance unit. It also informed us that it will be seeking increased and improved enforcement powers under its planned review of the AH Act.

Monitoring and enforcement of environmental conditions needs significant improvement

Effective monitoring and enforcement of environmental conditions is essential in minimising impacts on the environment from mining operations. Monitoring reinforces the need for operators to consistently comply and enables agencies to detect and take enforcement action in response to non-compliance. Environmental conditions vary but generally relate to waste management, mining within approved areas and managing fuel and vegetation loss.

DMP is the main agency responsible for monitoring environmental conditions for mining. OEPA and DEC also have responsibilities while DSD's responsibility for monitoring mines that operate under State Agreements is unclear.

We found serious weaknesses in the monitoring of compliance with environmental conditions. As a result, we cannot give assurance that agencies are adequately aware of non-compliance or if environmental conditions are delivering the desired outcomes.

DMP identified 10 cases of 'major' non-compliance, 13 'moderate' and numerous instances of minor non-compliance in 2009-10, though we have concerns about the reliability of DMP's monitoring and compliance information. We found no cases of significant environmental harm that had occurred without DMP's knowledge. Types of major non-compliance identified included tailings being discharged into the environment, construction of dams without approval and mining without approval.

There are three main elements in the approach to monitoring environmental conditions. All three are needed for the approach to be effective. They are:

- **Regular reporting** – operators are required to report on environmental management and any non-compliance.
- **Review and assessment** – agencies review and assess the information operators provide. They also use it to plan other monitoring activities, identify trends and trigger enforcement actions.
- **Independent verification** – agencies conduct site inspections to verify the reliability of the information provided by operators, detect non-compliance and trigger enforcement.

Annual Environmental Reporting is not effectively monitored or used increasing the risk that breaches of conditions may go undetected

Annual Environmental Reports (AERs) are a key source of information about operator compliance with conditions and hence should be carefully reviewed by DMP. AERs can include information about planned environmental management activity, information resulting from such activity, self-reported non-compliance and corrective action. They also sometimes note inspections by other agencies.

Submitting an AER is a condition for most mines under the Mining Act. Some State Agreement mines have different arrangements but the vast majority of mines must report regularly to DMP. Our testing of 71 mines found that 64 were required to submit AERs but only 35 (55 per cent) complied.

Monitoring and enforcement of environmental conditions needs significant improvement

When companies were late in submitting AERs, we found DMP almost never took action. Our sample showed only one case, in 2007, where DMP issued a warning letter to an operator about a late AER. In four cases it had granted an extension. Failure to submit an AER is a breach of conditions

DMP's capacity to monitor and ensure compliance with reporting conditions is undermined by poor records management. It has no central record of AERs received. The only way to find which sites have submitted an AER is to search DMP's document management system looking for key words relating to the site. This process is time consuming and unreliable. In some cases we had to verify the results of our search by checking with the specific staff member who had oversight responsibility for the mine.

We found that DMP rarely reviews the AERs operators provide. Approximately 10 per cent of our five year sample of AERs had been reviewed by DMP. This was contrary to DMP's quality management system under which all AERs should be assessed when they are received.

The failure to review AERs:

- limits DMP's knowledge of the performance of individual operators – knowledge that can be used in allocating scarce resources to conduct routine inspections
- increases the risk that non-compliance and detrimental impacts will not be identified
- means that DMP may not take appropriate enforcement action.

OEPA reviews reports on compliance with Ministerial conditions

The OEPA is responsible for monitoring Ministerial conditions placed on projects as a result of environmental impact assessments by the EPA. Around 115 mining projects are required to report to the OEPA. In planning its compliance program the OEPA scans all reports it receives from operators, and uses this information as part of its risk assessment. This in turn drives the selection of sites for desk-top audits which include assessing reports against approved conditions. OEPA conducted audits of 55 reports on Ministerial conditions in 2009-10, and 47 in 2010-11.

With increasing numbers of projects, the OEPA believes it is unlikely to ever be able to audit or inspect all projects with Ministerial conditions. To mitigate this, the EPA has recently required managing directors of operating companies to formally approve reports submitted to the OEPA. The OEPA believes that this increases accountability and responsibility for compliance and non-compliance. We support this decision.

DMP's inspection regime does not deliver adequate assurance that mines meet their conditions

DMP inspects mines to verify how operators comply with conditions and to identify breaches. This should allow it to provide assurance on the extent to which operators minimise their impact on the environment. A well planned inspection program can also provide an incentive to operators to comply with conditions by creating the potential that all non-compliances will eventually be identified.

However, DMP's approach to planning and managing inspections is not effective. This reduces both the assurance that can be given about levels of operator compliance and the operator's incentive to comply.

We expected that DMP's inspection program would:

- define the number and frequency of inspections needed to give assurance about compliance with conditions
- include risk assessments to select the sites to be inspected
- have clear inspection guidelines and criteria to ensure consistency during inspections
- have clear guidelines and good controls to ensure the suitability of inspection reports and consistent and authorised enforcement action.

DMP's planning and management of its inspections did not fully meet any of these expectations.

DMP has not defined how many sites it needs to inspect or how often

DMP has not established the number of inspections it needs to carry out to give effective coverage and provide assurance. Of the 71 sites in our sample, 65 were subject to the Mining Act and therefore to DMP inspection and enforcement, but only 28 (43 per cent) had been inspected in the past five years. The 37 sites (56 per cent) not inspected in the last five years included 31 active mines and six that were in care and maintenance. Sites in care and maintenance still require periodic inspection.

Establishing a baseline or target for inspections should be based on the results of past inspections and emerging issues that could cause the risk of non-compliance to rise. Without a sound baseline it is not possible for DMP to demonstrate that its coverage is adequate. We note that in 2010 DMP established a target of inspecting 80 per cent of high risk sites each year. However, there is no target or expectation of how often medium or low risk sites should be inspected. Later in this report we discuss DMP's lack of good information and analysis of the results of its inspections. This lack of information makes it difficult for us to assess the adequacy of DMP's inspection coverage although the number of inspections appears low.

We also found that DMP had no clear rationale for allocating resources to undertaking compliance activities versus the assessment of new mining applications – with both activities making use of the same types of staff. This makes it difficult for the department to determine how effective or efficient it is. In practice, assessments took precedence over compliance, the number of inspections was set according to available resources, and resourcing choices were decided case-by-case.

DMP has introduced a risk assessment system to plan inspections, but it needs improvement to ensure effective use of resources

Inspecting mines is a key part of ensuring that operators comply with environmental conditions placed on them and verifying the information that operators provide. WA has a large and increasing number of mines, and DMP has limited staff resources. To make sure its process gave adequate coverage over time, we expected that DMP would prioritise sites for inspection based on the risk they posed. Although DMP began to rate sites according to risk in 2010 its approach is not sufficiently developed to effectively select which sites should be inspected and how often.

DMP's risk assessment does not have clear criteria for consistently identifying the intrinsic risk a site presents. DMP assesses the physical characteristics of sites and management practice and rates them as high, medium and low. Physical factors include how close the site is to population, the size of the mine, the material being mined, and the life of the mine. Management practice includes how operators have dealt with identified problems in the past.

The combination of these ratings should then define what overall level of risk a site presents, its intrinsic risk. However, DMP's risk assessment tool does not define how the ratings on individual factors should be combined to arrive at an overall risk assessment. This means the risk rating given to sites may be inconsistent, and underrate or overstate its intrinsic risk.

A mature risk approach allows an agency to match its inspection resources to identified risk. Specifically, the risk rating for a site should determine how frequently a site is inspected. For instance, a high risk site might require annual inspections. A medium risk site might call for inspections every two or three years. DMP's approach does not do this. The risk rating for a site does not automatically determine how often a site is inspected. As a result, high risk sites may not be inspected frequently enough.

Under DMP's approach, how recently a site was inspected influences the assessment of the site risk. Thus, if a site has been given a high rating but was inspected recently it may be downgraded to medium and inspected less frequently. This is not sound risk assessment practice. How recently a site has been inspected does not change its intrinsic risk. In a fully risk based system this should not change how often a site is inspected.

Prior to 2010, DMP did not have a risk assessment tool in place. Inspections were selected based on the experience and knowledge of DMP Environment Division staff, and on information received from external sources.

While we focused on activity at DMP, we also looked at some aspects of environmental inspections at DEC. We found that DEC has a formal risk-based inspection regime covering all sites that have licences under Part V of the EP Act.

Under this regime, the intrinsic risk of a site determines how often it is inspected. However, DEC only completed 51 per cent of its 98 planned inspections at mine sites in 2010-11.

DMP's internal controls over its inspection program need to be improved

There were several weaknesses in how DMP managed inspections and their outcomes. Improving these controls will improve and ensure consistency and quality in how inspections are conducted, how findings are reported and what action is taken in response to those findings. Specifically:

- There are no clear guidelines or criteria that define what every inspection should cover. This increases the risk that key aspects may be missed on some inspections. To some extent this is mitigated by the way inspections are staffed. Generally they are conducted by two officers, one responsible for the region and one other. We also note the expertise of Environment Division staff.
- Inspection reports were not formally approved by senior staff – contrary to normal good practice. Senior officer approval of inspection reports helps to ensure that DMP takes appropriate and consistent action when non-compliance is found. It also helps provide assurance on the quality of work done and the types of findings being made. We note that DMP introduced a sign-off sheet for all inspections in March 2011. Of the 28 inspections in our sample 11 had been formally reviewed.
- Inspection reports were comprehensive and consistently contained details of non-compliance. However, we were concerned that formal feedback to operators about inspection results often took too long. Of the 28 inspections we tested, eight reports were sent to operators more than three months after the inspection and four took more than six months. We have recommended to DMP that they seek ways to provide more timely feedback to operators so that any necessary corrective action can be taken promptly.

Weaknesses in information management limit DMP's ability to analyse and demonstrate the effectiveness of its inspections

DMP lacks adequate records management processes and systems to ensure that information from inspections is captured and used to monitor compliance with environmental conditions. This means it has limited ability to assess how effectively it regulates the industry. It also limits its ability to report accurately to Parliament on how well operators comply with environmental conditions.

DMP does not maintain ongoing consolidated performance information about which sites have been inspected, what was found, and what action was taken as a result of the inspection by either DMP or the operator. Information about compliance is kept in multiple systems and places, and it is not recorded consistently. Often the information is incomplete. In many cases individual officers have the only knowledge of inspection outcomes.

The result of this situation is poor quality and unreliable information that is inefficient to access and use. Not surprisingly, we saw no evidence of regular DMP analysis of trends in industry compliance or whether particular conditions were achieving intended outcomes.

An example of the unreliability of information is a spread-sheet that records instances of 'major' and 'moderate' non-compliance identified from inspections for annual report purposes. The record is not comprehensive. The 'major' and 'moderate' categories do not include all non-compliance found. They exclude non-compliances that are resolved during inspections. Staff are required to progressively update the spread-sheet.

When we first reviewed the 2009-10 spread-sheet, it showed 20 instances of 'major' non-compliance and 13 of 'moderate' non-compliance identified from inspections. The 'major' figure was reported in DMP's annual report. In the course of our analysis, DMP corrected the spread-sheet to reduce the instances of major non-compliance to 10. The numbers were revised after the event because not all non-compliance actions were updated to reflect the final action taken. In addition, we note that the Kalgoorlie and Perth offices use different informal criteria for classifying non-compliance, neither of which was sufficiently clear for staff use.

DMP reports a Key Performance Indicator to Parliament on the percentage of mines that complied with environmental conditions when inspected. Compliance is assessed as the absence of 'major' non-compliance. In 2009-10 the reported level of compliance was 89 per cent against a target of 70 per cent. If they had included both 'moderate' and 'major' non-compliances, the percentage of mines that complied would have fallen to 67 per cent. The KPI also provides no measure of how effective enforcement activity is at ensuring operators rectify non-compliance.

As part of improvements to the approvals process, DMP has installed the Environmental Assessment and Regulatory System (EARS). This provides online access to proponents and allows tracking of mining applications. However, it does not allow DMP to track information on mines after they have been approved. DMP informed us that it expects to expand EARS to include post-approval activity in 2011-12.

DMP has an appropriate approach to environmental enforcement but it needs refining

Effective enforcement when breaches are found is necessary to good regulation. DMP's approach to environmental enforcement is appropriate and potentially successful. It establishes a hierarchy of actions based on the severity of the non-compliance and the response of the operators involved (Figure 2). However, two weaknesses decrease DMP's ability to demonstrate that its environmental enforcement is consistent:

- There are no clear established criteria for determining the severity of non-compliance.
- DMP does not monitor the outcomes from inspections in a coordinated or comprehensive manner.

Monitoring and enforcement of environmental conditions needs significant improvement



Source: DMP

Figure 2: DMP environmental enforcement hierarchy

DMP's enforcement policy seeks to promote voluntary compliance. Staff are advised to apply the lowest level of enforcement action that will achieve compliance. Where operators are likely to comply with informal requests to rectify issues, then no further action should be taken.

This approach relies heavily on staff judgement and expertise. DMP has not established guidelines or criteria to support decisions about where a particular non-compliance should be placed in the enforcement hierarchy. As a result, there is a risk of inconsistent and inappropriate enforcement action being taken to rectify issues.

The Department believes that its approach is effective in resolving minor non-compliances. However, it could not demonstrate this because it does not monitor whether operators act on its recommendations to rectify minor non-compliances. It only tracks recommendations made when inspections find major non-compliance. This departs from DMP policy which requires all non-compliance to be recorded and tracked.

There is a risk that poor compliance will not be detected on all State Agreement sites

DSD facilitates and administers State Agreement projects but takes only a limited role in monitoring and enforcing compliance with environmental requirements in the Agreements. It expects that DMP activity will cover this need. However, DMP also does not fulfil this role. DMP considers that because not all aspects of mining on the 26 State Agreement mines are controlled under the Mining Act, it does not have authority to monitor or enforce them. As a result, there is a risk that some non-compliance will not be identified or addressed.

Under the Mining Act, companies submit Mining Proposals to DMP for approval. These cover technical and environmental actions that operators must deliver. DMP has authority to monitor compliance and require reporting against these approved plans.

State Agreements require a Project Proposal, which is approved by the Minister for State Development. DMP considers that it has no power to monitor if operators meet conditions set under these proposals. DMP can inspect any mine, but any proactive action to resolve any identified issues on State Agreement mines must be coordinated and led by DSD.

The State is currently exposed to potentially high financial risk if operators do not meet rehabilitation and mine closure conditions

Good regulation of the industry includes ensuring that the State adequately manages the risks posed by end-of-mining outcomes. To minimise its exposure to long term risks, the State must ensure that:

- any failure to meet mine rehabilitation and closure conditions does not expose the State to significant financial costs
- mines are closed and sites rehabilitated to agreed standards.

The current level of financial security or bonds required from operators leaves the State exposed to potentially significant financial risk in the event of poor mine closure and rehabilitation. Recent changes to rehabilitation requirements have partially mitigated this risk. There are also changes planned to improve the State's position in terms of financial security.

Financial securities held against poor end-of-mine outcomes account for less than 25 per cent of potential rehabilitation costs

The State requires mines operating under the Mining Act to provide a bond against environmental performance. In March 2011 there were 4 500 bonds held, totalling nearly \$900 million.³ A 2006 review by DMP of the bond system estimated that the worst case cost to the State of rehabilitating all mines would be \$4-6 billion.

In 2008, the Government decided to increase the bonds required from operators but then deferred its implementation due to the onset of the global financial crisis.

The Minister for Mines initiated a new review of the system in December 2010. DMP reported that current arrangements expose the State to *'potentially "catastrophic" consequences if any mine site fails'*. DMP supports replacing the unconditional performance bond system with a fidelity fund. It believes such a system *'will substantially address the government's financial risk.while not unnecessarily deterring investment in the State's mining industry.'*

DMP expects that under a fidelity fund operators would pay significantly less than the full rehabilitation cost. However, the funds could be used according to need rather than being tied to specific pieces of land. DMP has published an options paper, sought comment, and expects a decision in the near future. Government has stated that if the fidelity fund is not adopted, it will move to 100 per cent bonding. Other states in Australia require 100 per cent bonding.

In the interim, DMP is increasing bond levels. In December 2010 it announced that by 2012 rates for the highest risk activity will increase from \$12 000 per hectare to \$18 000 per hectare. By 2014 bond rates will be increased to 50 per cent of recovery.

Bonds must be unconditional bank guarantees, held by banks registered in Australia. These bonds are held against individual tenements, and can only be called on to fund rehabilitation on those specific tenements where operators fail to meet required conditions or standards.

³ This figure covers all mining under the Mining Act, even though the number of bonds does not match the number of tenements. As the quantum of bonds changes, sometimes bonds are held over multiple tenements. This minimises the number of individual guarantees operators must establish with banks.

The State is currently exposed to potentially high financial risk if operators do not meet rehabilitation and mine closure conditions

Our sample testing showed that all required bonds had been lodged. We also found that bond amounts were regularly reviewed. The usual review process involves assessing bonds when work programs are changed, normally every few years. If there is an increased area affected, bond amounts will increase. Any ongoing rehabilitation is considered in setting new bonds. This process is carried out by DMP's Environment Division, which informs the Bonds Branch of changes. The Bonds Branch then tracks lodgement.

Mines operating under a State Agreement are not generally required to pay any bond. There is no standard mechanism to provide compensation to the State in the event of unacceptable rehabilitation in these cases. DSD informed us that four of the current 26 mining State Agreement operations have been bonded.

Stronger requirements for closure and rehabilitation planning have been introduced, partially mitigating the risk to the State

In 2010 the Mining Act was amended to make formal closure planning compulsory. Under the changes all applications received after 30 June 2011 must include Mine Closure Plans for approval. All existing mines will be required to submit closure and/or rehabilitation plans by 30 June 2014. The plans are intended to minimise the risk that companies reach the end of mining unprepared or financially incapable of successfully rehabilitating the site, thereby leaving the State with the liability.

Previously, it was not compulsory for operators to have approved, agreed or costed closure plans for their mines. Mines not operating under the Mining Act, including pre-1978 State Agreements, will not be included unless required by Ministerial conditions.

The change will formalise better practice across the industry. DMP and industry stakeholders informed us that ongoing rehabilitation is a usual, if not universal, part of mining practice. New guidelines from DMP require plans to be costed for rehabilitation to agreed levels, and reviewed periodically. Previously, operators might have been required to seek approval from EPA, DMP and/or DEC on mine rehabilitation standards.

While current mines have increased controls over how they will be rehabilitated, the same is not the case for historical mines. Across the State there are more than 11 000 abandoned mines. Ownership and responsibility is not clear for the great majority of these, especially for rehabilitation. Many exist on land managed by DEC and other agencies. A small number sit on current mining tenements. There has been no comprehensive approach to dealing with these sites. DMP has drafted a policy to guide good practice in managing these mines, which it hopes to finalise this year. DMP and Government should ensure that this policy is finalised as a priority.

Auditor General's Reports

REPORT NUMBER	2011 REPORTS	DATE TABLED
7	Second Public Sector Performance Report 2011 – Use of ICT contractors in government – Acceptance of gifts and benefits by public officers in the Department of Health	7 September 2011
6	Right Teacher, Right Place, Right Time: Teacher Placement in Public Schools	31 August 2011
5	Public Sector Performance Report 2011 – Agency Compliance with Procurement Requirements – Managing the Priority Start – Building Policy	29 June 2011
4	Information Systems Audit Report	15 June 2011
3	Audit Results – Annual Assurance Audits completed since 1 November 2010, including universities and state training providers; and Opinion on a Ministerial Notification	25 May 2011
2	Opinion on Ministerial Notification: Ministerial decision to not provide information to Parliament in relation to the theatre production of <i>The Graduate</i>	23 March 2011
1	Raising the Bar: Implementing key provisions of the <i>Liquor Control Act</i> in licensed premises	23 March 2011

The above reports can be accessed on the Office of the Auditor General's website at www.audit.wa.gov.au

On request these reports may be made available in an alternative format for those with visual impairment.

