

**Approvals Process
Reforms**

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1. BACKGROUND

The State Government has announced an intention to reform approvals processes relating to the minerals and petroleum industry through the formation of an Industry Working Group and a working group of Directors General.

It is understood that the Industry Working Group is considering key focus areas for broad strategic reforms of the approvals process including a "lead agency model" and amendments to native title and heritage approvals processes, while the Directors General working group has developed proposals for administrative and minor legislative amendments to the current approvals process.

This paper has been developed to provide input into these discussions, but does not necessarily reflect the opinions of industry organisations or individual resources companies. For this reason it is a confidential and not for general circulation.

2. COMMENT ON PROPOSED STATE GOVERNMENT REFORMS

2.1 LEAD AGENCY MODEL

With reference to the proposed model considered by the Industry Working Group, this is broadly similar to the planning system that operates in NSW where all mining and petroleum developments are considered under planning legislation by planning authorities including local government, State government agencies and the Minister for Planning in accordance with planning policy.

There was little detail provided on the model but a conceptual outline was examined. The model was assumed to address all primary and secondary approvals.

This model categorises projects into three streams:

- large projects decided by Cabinet with no appeal
- mid-sized projects decided by a central lead agency with appeals against the decision
- small-sized projects decided by local government or regional councils with appeals against the decision

A central lead agency decides on the allocation of projects to streams.

While it is unclear which primary and secondary approvals would be collapsed into this process, this model would appear to:

- avoid duplication
- collapse all secondary and primary approvals into one decision maker
- provide for a "one stop shop"
- separate projects into three separate groups depending on their size
- require a new and very large overhaul of existing legislation to place approval decisions in one agency

- apply to mining and petroleum approvals
- enable decisions of agencies to be challenged through an appeal process.

There was industry support for the broad thrust of this model and the concept of a lead agency, but not the prominence given to the planning portfolio. Local authorities or regional councils as decision makers on minor mining or petroleum proposals would also be of concern to industry. The model is not clear on how the EPA assessment process would be modified and appears to take the Minister for Environment out of all decision making processes. It was concluded this model would not be suitable in its current form for Western Australia.

2.2 INTERSTATE MODELS

Approval frameworks of other States have been considered in the development of the proposed approval model described later in this paper.

In particular, consideration was given to the South Australian, Queensland and New South Wales models where the primary responsibility for approval of mining and petroleum activities resides with different agencies.

In Queensland, environmental authorities (there is no separate approval of mining and petroleum activities required under mining or petroleum legislation) are issued by the Environmental Protection Agency for all mining and petroleum activities except significant projects where an approval is issued by the Coordinator General. Projects other than significant projects are separated into two approval streams – projects of low environmental risk and projects of medium and high environmental risk.

By contrast, in South Australia, approvals for mining and petroleum activities (including any environmental requirements) are issued by Primary Industry and Resources SA, except for major developments where the decision maker is the Minister responsible for the planning portfolio. An environmental licence (but not a works approval) which is issued by the Environmental Protection Authority is required under environmental legislation.

In New South Wales, approvals for all mining and petroleum activities are issued under planning legislation by the local authority, or the planning Minister in the case of prescribed major developments.

These interstate approval models provide alternatives to the one proposed in this document.

2.3 ADMINISTRATIVE AND MINOR LEGISLATIVE AMENDMENTS

2.3.1 Administrative

The administrative initiatives proposed are generally supported but some are more important than others. A large number of the initiatives are outcomes of the recent EPA review of the EIA process undertaken with the involvement and support of industry. Notwithstanding this support, any changes to administrative processes should be done in consultation with and then clearly communicated to industry.

Note also that a number of the proposed or 'in progress' improvements have been 'in progress' for a number of years. It is critical that the outcomes of this process are managed in line with expectations and with sufficient resources.

The top priority initiatives identified included:

- revision of agreement between the former DoIR and DEC on clearing permit applications (No.4)
- target timelines for EPA process (No. 12)
- implement new EPA project management system (No. 13)
- implement risk-based approach in EIAs (No. 14)
- implement outcome – focussed environmental conditions (No. 15)
- implement EPA backlog clearance strategy (No.16)
- develop revised EPA administrative procedures (No. 18)
- implement outcome-focussed heritage conditions (No.19)
- upgrade systems for tracking and reporting on timelines for AHA applications (No.20)
- integrate appeals and agency consultation into a single process (No.22)
- use Cabinet and ensure prompt response from Ministers to reduce timelines on the issue of Statements under Part IV of the EP Act (No. 23)
- revise EPA's procedures for nominating DMAs (No.24)
- revise the current MOU between the former DoIR and EPA to include risk-based approach (No. 25)
- review mining tenement conditions for conservation reserves (No. 27)
- publish key DMP approval checklists and guidelines (No.28)
- publish native vegetation clearing assessment guidelines (No.29)
- review and publish policies and procedures relating to the administration of the *Aboriginal Heritage Act 1972* (No. 30)
- prepare improved policies and guidelines, and maintain and improve DEC staff knowledge (No. 32)

There are some areas which industry believes are top priority but have not been addressed including:

- exemptions to the clearing regulations
- insert strict timelines into administrative procedures of agencies (particularly for Ministerial decisions)
- DOW produce guidelines for types of waterways that require bed and banks permit
- where native titles are resolved by consent, technical problems that arise including validity of miner's rights and access to "stranded tenements" should be resolved as part of the determination process
- administration of the section 18 approval process should not enable it to be used as leverage for commercial outcomes

- wider use of licensing powers under section 91 of the Land Administration Act 1997 to allow proponents to undertake preliminary land investigations (including environmental) while applying for permanent tenure
- change current policy on interpretation by DMP of s.66(c) of the Mining Act that includes soil removed or put aside for drill pads in the total amount of material that may be removed from a lease rather than just relating to the removal of bulk samples or mining
- conducting heritage approvals in parallel with EP Act approvals
- consider land granted under any Act for use in support of any State Agreement as land granted pursuant to or under the Agreement
- urgent review of administrative procedures of the Department of Indigenous Affairs
- resource the Warden's Court to enable it to expeditiously treat matters before it and not be held up pending the completion of native title processes.

There is a substantial workload in the implementation of the initiatives and there is a concern that the capability of agencies to complete the reforms in the time indicated will not be realised.

2.3.2 Minor legislative changes

The proposed minor legislative amendments to the Mining Act and EP Act, in the absence of more fundamental changes, are generally supported. The following amendments are viewed as being of top priority:

1. Amend the Mining Act to enable proponents to apply for Miscellaneous Licences for railway purposes (No. 1).
2. Amend the Environmental Protection Act 1986 to:
 - remove appeal rights for proposals that EPA has recorded as being managed under clearing permits (No. 11)
 - remove appeal rights against the setting of the level of assessment (No. 12)
 - reduce the appeal period for the refusal to grant a clearing permit (No. 15)
 - remove third party appeal against the refusal of a clearing permit (No. 16)
 - reduce appeal period for appeals against conditions of clearing permit (No. 18)
 - amend the requirement for referring DMAs to be constrained in making a decision to ensure that DMAs are only constrained if the decision has the effect (rather than could have the effect) of causing or allowing the implementation of the proposal (No. 21). Note this amendment may not go far enough to resolve this matter.
 - enable incidental works such as geotechnical drilling, flora and fauna surveys etc that may require licences to proceed while the proposal is being assessed by the EPA (No. 22)
 - amend the prescribed premise schedule to remove overlap and duplication (No. 23)

Industry is of the view that more fundamental change is required to the existing approvals system in Western Australia. Subsequent sections in this paper address the principles and form of an appropriate approvals model for the State.

3. AN APPROPRIATE APPROVAL MODEL FOR MINING AND PETROLEUM ACTIVITIES

3.1 PRINCIPLES

The following model has been developed with a number of broad principles in mind that should apply to any approvals system:

- efficiency
- transparency
- certainty of process
- elimination of duplication
- clear lines of authority
- single points of contact and coordination.

More specifically, immediate and longer term reform objectives should be considered.

Short term objectives:

- implementation of EPA EIA review outcomes
- nominating a Minister responsible for coordinating decision making across government for important or strategic projects
- enhanced project management and coordination
- appropriate resourcing
- imposing time limits and project tracking mechanisms
- provision for e-lodgement and tracking of application within DIA
- reform of appeals and ministerial condition setting process
- continue efforts to improve confidence in the accuracy of the register of Heritage Sites.

Longer term objectives:

- new approvals framework for integration of social, economic and environmental factors for significant projects designated by a responsible Minister supported by single lead agency
- legislative reform to remove duplication and increase approval efficiency and effectiveness
- regulatory impact assessment
- enhanced land use planning that anticipates development
- development of supporting policy framework
- review of the structure of key government agencies
- effective resourcing through a service oriented approach, appropriately trained staff and accountability measures
- improvements in the administration of the Aboriginal Heritage Act

- support for a biodiversity institute.

3.2 EXPECTATIONS

Expectations of an approval process are as follows:

1. Appropriate policy and planning framework in place
2. Adequate resourcing and capacity in key agencies
3. Certainty of timeliness and process
4. One entry point for applications and one decision maker for activities according to project significance and case management of approvals across government
5. Rigorous timelines both "hardwired" and administrative including transparent rules for "stop the clock"
6. Transparency of process and outcomes - reasons behind decisions provided
7. Proportionality in the consideration of a proposal based on environmental risk and importance to the State
8. Special consideration for major projects
9. Minimal overlap or duplication and clarity in the roles of agencies
10. Public confidence in the process including the enforceability of conditions.

3.3 STRENGTHS OF THE CURRENT SYSTEM

The strengths of the current system that industry believes should be retained include:

1. General public confidence and integrity (other than the heritage process)
2. Independent EPA
3. Agreements between DEC and DMP (but in need of revision)
4. Consultative mechanisms (for example the recent EIA review) in some instances.

3.4 DESCRIPTION OF PROPOSED APPROVAL MODEL FOR MINING AND PETROLEUM ACTIVITIES

A framework for a decision making lead agency approvals model was developed by the workshop based on a number of principles.

Provided, however, that the foregoing objectives are achieved, there may be other models that can meet the principles for an effective approvals process. This represents one model for consideration.

3.4.1 Principles and model description

Prerequisites

The proposed model will only be completely efficient and effective with the following in place:

- appropriate administration including a business approach to administering functions which identifies required organisational outputs, key business processes involved in service delivery and the formulation of a service delivery model
- adequate capacity and resources in the agencies performing approval functions
- regional planning and data gathering by Government in advance of development
- clear policy frameworks and requirements.

In addition, applicants have an obligation to gather and supply information required to gain approvals and should endeavour to submit the required documentation and information in a timely manner to facilitate the timely issue of approvals.

Description

The application of key principles identified during the workshop and description of the proposed model (shown diagrammatically in Figure 1) is as follows:

1. Certainty of process and outcome

Timelines should be specified in legislation and administrative procedures. Eliminate appeals under the EP Act but provide for enhanced opportunity for public review and appeal under reformed mining and petroleum legislation. Greater prescription of projects requiring EPA assessment is proposed to reduce uncertainty.

2. One entry point for all applications

Entry point proposed through a single resources agency, ie. Department of Minerals and Petroleum or Department of State Development. The diagram provided at Figure 1 is an example which assumes the Department of Minerals and Petroleum as the lead agency, however this could be modified should Department of State Development assume this role.

3. One decision maker for all activities

One decision making agency to be the case manager for all projects. This should sit within either of the resource of project development portfolios to avoid duplication of resources across agencies.

4. One decision maker for mining and petroleum tenure

The Minister for Mines and Petroleum would grant tenure for all projects except the Minister would be instructed by the Premier on major projects. The grant of tenure may proceed or be issued simultaneously with the approval process for an activity.

5. Proportionality in the consideration of proposals

Under the proposed model, projects would be split into three streams – Standard (standard conditions would apply, low environmental risk), Significant and Major. Each stream would be subject to approval procedures according to their complexity and significance.

6. Special treatment for major projects or projects of State significance

The Minister for Mines and Petroleum would designate major projects with the concurrence of the Premier. Major projects would be defined on the basis of their significance to the State and not necessarily on their environmental significance. The Keating Review established three criteria for such projects, and may provide a starting point (a doubling of the capital investment and workforce may be more appropriate), as follows:

- \$50m capital investment and/or 150 peak construction workforce/or 50 permanent workforce
- Requires a range of government approvals
- Complex issues are raised by the proposal

Changes to previously designated major projects would be treated as a major project.

The Premier would be the decision maker for major projects and would issue instructions to the Minister for Mines and Petroleum on tenure and the Department of Mines and Petroleum on activities.

7. High level facilitation of major projects

The Department of State Development would conduct high level facilitation and be responsible for the preparation of Agreement Acts for major projects as required.

8. Avoidance of duplication and overlap, and improved timeliness

Selected secondary approvals (eg works approvals and clearing permits) would be melded into the mining and petroleum activity approval process. The amalgamation of other secondary approvals in the environment portfolio under the EPA will further reduce duplication and overlap within that portfolio.

The model also proposes exempting mining and petroleum activities on mining and petroleum tenements from development approval (as is the case in South Australia) under the *Planning and Development 2005*. This would avoid duplication and overlap and provide more timely approvals. Proponents would still be required to obtain all necessary building and health Act approvals from local authorities as they do currently.

9. Transparency and community access

The intention is to reform mining and petroleum legislation to enable greater transparency of process and decision making, enhance community access including public review of mining and petroleum proposals and provide for appeals against conditions of approval for activities to the State Administrative Tribunal.

10. EPA role retained strengthened and extended

EPA would retain its independent EIA advisory role for prescribed or high environmental risk projects. The EPA would:

- be directly resourced and accountable for managing its resources and outputs;
- take on the functions of Part V (other than works approvals for mining and petroleum activities), contaminated sites, waste management and associated compliance monitoring functions under the EP Act to remove duplication and overlap within the environment portfolio and;
- be the primary environmental policy agency.

11. Involvement of Minister for Environment in decision making

The Minister for Environment involvement in decision making would be extended into the issues of approvals for mining and petroleum activities. The concurrence of the Minister for Environment and Minister for Mines and Petroleum would be required for the approval of significant mining and petroleum activities. If agreement cannot be reached between the two Ministers, the matter would be referred to the Premier for decision.

The Premier would be obliged to consult with the Minister for Environment on major projects before making a decision.

3.5 COMPARISON OF THE PROPOSED MODEL WITH THE CURRENT SYSTEM

A comparison of the proposed and current approvals system for mining and petroleum activities is provided in Table 1.

Table 1 Comparison of proposed and current approval system

Item	Current	Proposed model	Conclusion
EPA			
Level of assessment	Sets level of assessment for activities referred by DMP or proponent	No change but sets level according to a prescribed schedule or high environmental risk	More certainty as to process
Assessment of projects	According to Administrative Procedures	According to Administrative Procedures (under review)	No change Transparency retained
Community access to EPA EIA process	According to Administrative procedures	According to Administrative procedures (under review) but public able to comment on draft EPA report before finalisation	Increased community access to EPA EIA process
Assessment report	Submitted to and released by the Minister for Environment	Submitted to and released by Minister for DMP	Public availability of EPA report and transparency is retained
Environmental policy	EPPs and State Environmental policies. Some confusion as to extent of DEC vs EPA policy responsibilities	EPA is primary environmental policy maker	More policy certainty
Control of emissions	Policy role only. Overlap and duplication between Part V EP Act (currently DEC) and Part IV administration (currently EPA)	Policy and Part V EP Act responsibilities and resources except works approvals and clearing permits for mining and petroleum activities to EPA. Second and third party appeals to SAT on licence conditions. Applicant may appeal refusal of licence	Reduces duplication and overlap More certainty of process and outcomes Appeals to an independent tribunal
Management of contaminated sites	Administered by DEC. Overlap and duplication between Part V EP Act (currently DEC) and Part IV administration (currently EPA)	Function and resources transferred to EPA. EPA accountable for development, management and enhancement of staff capability	Reduces duplication and overlap.
Waste management	Current under the control of a Waste Management Board with DEC supplying staff resources.	Function and resources transferred to EPA. EPA accountable for development, management and enhancement of staff capability	Reduces duplication and overlap.
Control of resources	No responsibility or control of staff or resources allocated to the EIA function	Resources allocated directly to EPA and it will be responsible and accountable for development, management and enhancement of staff capability	Enhanced efficiency and effectiveness Strengthened EPA

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Item	Current	Proposed model	Conclusion
Minister for Mines & Petroleum			
Issue of mining titles	Title issued by the Minister Concurrence of Minister for the Environment is required in a Class A reserve, National Park or State Forests. Consultation required on other reserves. Objections to Wardens Court	No change except the Premier would instruct on major projects	No change except for major projects
Release EPA assessment report	No role	Release s EPA report	Preserves principle of Ministerial release of EPA report
DMP			
Streaming of projects	No formalised procedures	Formalised streaming of projects in accordance with their significance – standard, significant and major	Proportionality in the way projects are dealt with.
Decision making	All activities but separate approvals by others, for example: <ul style="list-style-type: none"> • projects assessed by EPA by Minister for Environment • works approvals and licences by DEC • section 18 by Minister for Indigenous Affairs • clearing permits by DEC 	All activities except for major projects Increased scope of mining and petroleum approvals to address environmental matters including those addressed by works approval, clearing permits and other appropriate secondary approvals. Alignment of EPA and M&P approval processes. Enhanced environmental responsibilities for standard and significant projects enshrined through changes to mining and petroleum legislation	Reduces overlap and duplication Increases timeliness. Increased accountability for environmental outcomes Certainty of process and outcomes
Community access	No public review of applications for activities No applicant response to agency comments on activities not assessed by EPA No assessment report publicly released	Public review of applications for significant activities Applicant responds to comments received and any EPA assessment report Assessment report made publicly available	Increased community access to the process Applicant has an opportunity to respond Increased transparency and public accountability
Appeals against decisions on activities	No appeals	Appeals against decision to not issue approval by applicant to SAT Appeals against conditions of approval by applicant and others to SAT	Increased community access Appeals to independent tribunal Certainty of process
Case management and coordination	Very little case management No single point for coordination or submission of applications	Case management would be required Single point for applications	More timely outcomes Management of overall approval process
Premier			
Decision maker	Not a decision maker	Decision maker on major projects by instructing Minister for DMP and DMP on approvals	Proportionality Special attention for projects of State significance. Improved timelines
DSD			
Facilitation	Conducted on selected projects by ODAC	All nominated major projects	Facilitation of approval process for important projects
Minister for Environment			

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Approvals Process Reforms

Item	Current	Proposed model	Conclusion
Implementation of proposals	Determines in agreement with other decision making authorities whether to approve implementation of activities assessed by EPA.	Minister concurrence required for the issue of approvals for all significant activities. Premier required to consult with the Minister on all major projects	Minister involved in DMP decisions on significant activities. No separate approval by the Minister. Improved timelines and reduced overlap and duplication
Appeals	Appeals to Minister against EPA decisions not to assess and level of assessment	No appeals In line with DG's working Group recommendation to remove appeal right against level of assessment	Improved timelines and certainty of process outcomes
	Appeals against EPA assessment report	No appeals to Minister but EPA assessment report is subject to public review before finalisation and appeals to SAT against DMP conditions of approval for all significant activities.	Improved timelines Community rights of appeal to an independent body on all conditions of approval for all significant activities
DEC			
In the EIA process	Expert input	Expert input	No change
Part V functions	Administered by the department	Administered by EPA	Reduces overlap and duplication
Planning authorities			
Development approvals	Required on tenements except those granted under Agreement Acts	All activities and associated infrastructure on tenements would be exempt from development approvals under the Planning and Development Act	More timely commencement of construction and reduced duplication and overlap
Building and Health Act approvals and associated by-laws	Required for all activities	No change	No change

3.5.1 Timelines under the proposed model

Table 2 illustrates the anticipated timelines (government processing time) under the proposed model for standard, significant and major projects compared with the current situation based on the application of Keating Review timelines and parallel processing of applications.

Table 2 Comparison of timelines for issue of approvals (mining and environmental) for current and proposed lead agency model for activities

Activity	Current ¹ (bus. days)	Proposed model ^{1,2} (bus. days)
Standard (for instance, straight forward programs of work, small cutbacks, environmental plans, seismic offshore)	30-60	20
Significant – no EPA assessment (for example, relatively minor changes to existing projects)	30-110	30-40
Significant - EPA assessment ²	155-260	100-175
Major – no EPA assessment (for example, relatively minor changes to existing major projects)	30-110	30-40
Major - EPA assessment ²	155-260	100-175

¹ Assumes all required information has been supplied by the applicant at each stage but does not include time taken for applicant to gather, supply and prepare documentation for each step of the process - these timelines reflect approval processing time within government. The actual time elapsed for approval would be longer than indicated for those activities that would have to gather information to satisfy the requirements during the process (particularly the EPA assessment process)

²Assumes appeals to Minister for the Environment. Timelines vary according to the level of assessment and do not take into account recent EIA reforms.

³No clearing permit, works approval or development approval required under the proposed model (integrated into the mining/petroleum activity proposal).

Under the proposed model, there is a substantial reduction of the overall approval timeline for all classes of mining and petroleum activities. These timelines do not include time saved as result of not requiring approval of development under the Planning and Development Act.

3.6 IMPLEMENTATION PLAN

The mining and petroleum industries generally support the immediate implementation of short term administrative initiatives and minor amendments to legislation proposed by the Directors General working group, but believe more fundamental change is required in line with the approval model presented in this paper.

Implementation of the proposed model (a lead agency model) would best proceed in two phases:

Phase 1 which would involve implementation of the following short term actions over the next six months consistent with the proposed model:

1. Implement the high priority administrative initiatives as developed by the Directors General and the additional initiatives proposed by the mining and petroleum industry (refer Section 2.3)
2. Designate administratively major projects to be facilitated by DSD based on the criteria presented under point 6 of Section 3.4.1 above.
3. Develop an administrative procedure for decisions on all major projects to be made by the Premier.
4. Delegate in full, powers and duties under the EP Act for works approvals and clearing permits to the Department of Mines and Petroleum for mining and petroleum activities.
5. Administratively establish the case management role within the Department of Mines and Petroleum.
6. Administratively establish one entry point for applications through the Department of Mines and Petroleum.
7. Delegate in full the remainder of Part V powers and duties to the EPA.
8. Strengthen the EPA by administratively separating the EPA and staff that support its EIA function and other staff who administer Part V of the EP Act from the Department of Environment and Conservation in line with the delegation of Part V powers to EPA.
9. Form an approvals reform group composed of senior representatives from peak mining and petroleum organisations NGOs, DSD, DMP, EPA and chaired by the Department of Premier and Cabinet to revise mining, petroleum and environmental legislation to implement the proposed decision making lead agency model.
10. Determine and resource adequately, agencies (including the State Administrative Tribunal) affected by the proposed model.

Phase 2 would commence concurrently with Phase 1 but would be completed over a period of about two years and would involve the following actions:

1. Establish a business management approach to ensure organisational outputs including the development of service delivery models for the EPA, DEC and DMP.
2. Amend mining and petroleum legislation to enable:
 - second and third party review and appeal rights consistent with the proposed model
 - application for and designation of major projects
 - concurrence of the Minister for the Environment on the approval of significant mining and petroleum activities including those assessed by the EPA
 - timelines on key steps in the approval process.
3. Amend the EP Act to enable:
 - proposed strengthening of the EPA
 - prescription of those mining and petroleum activities that require referral to EPA
 - provide for public review of draft EPA assessment report before being finalised
 - EPA reports to be provided to DMP and Ministers for Environment and Mines and Petroleum
 - concurrence of the Ministers for Environment and Mines and Petroleum on any approval given to an activity under mining and petroleum legislation that was assessed by the EPA
 - abolition of appeals against levels of assessment and EPA assessment reports
 - transfer of Part V, waste management and contaminated sites functions to the EPA
 - insertion of time limits for key steps.
4. Draft legislation to make it binding for agencies to prepare and issue for public review Regulatory Impact Assessment Statements on any proposed new or changes to legislation or regulations.
5. Establishment of accessible environmental databases and project management systems across government agencies to enhance efficient and effective decision making.

3.7 REGULATORY IMPACTS ASSESSMENTS

The concept of regulatory impact assessments is supported provided the process of preparation includes consultation with potentially affected organisations. Upon completion the statement should be made available for public comment.

Sunset clauses should also be introduced into legislation to prevent the accumulation of unnecessary law unless a regulatory impact assessment, which was prepared prior to the cessation of legislation, concluded otherwise.

Figure 1 - Outline of the proposed decision making lead agency model for mining and petroleum activities (assuming DMP as the lead agency)



