



Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

Submission to
Environment and Communications References Committee

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Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

Contents

About CME	1
Recommendations	1
Context	2
Mining industry in Western Australia.....	2
Existing Regulatory, Policy and Institutional Arrangements in Western Australia	2
<i>Environmental Protection Act 1986</i> , Part IV – Environmental Impact Assessment and Mine Closure Plans.....	2
<i>Mining Act 1978</i> – Environmental Impact Assessment (Mining Proposals) and Mine Closure Plans.....	3
Mining Rehabilitation Fund	4
Abandoned Mines Program	4
Unconditional Performance Bonds	5
Environment Protection and Biodiversity Conservation Act 1999 (Cwth)	5
Transparency and Public Availability of Information.....	6
Pit Voids.....	7
Additional Role of the Commonwealth	8
Conclusion	8

About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and are major employers of the resources sector workforce in the State.

In 2015-16, the value of Western Australia's mineral and petroleum production was \$88 billion. Iron ore is currently the State's most valuable commodity, accounting for more than half the State's production value at \$48 billion. Petroleum products (including LNG, crude oil and condensate) follow at \$18.4 billion, with gold third at \$10 billion.

The sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector composed almost 34.8 per cent of estimated total state revenue in 2015-16, or around \$4 billion (Iron Ore - \$3.4 billion).

Recommendations

Western Australia already has an existing regulatory framework to manage rehabilitation of mining and resources projects including:

- An annual levy contribution scheme to provide revenue for abandoned mines;
- Ability to apply provisions for financial assurance (unconditional performance bonds);
- An abandoned mines policy and programme that prioritises and rehabilitates historical abandoned mines;
- Legally binding requirements for mine closure plans and rehabilitation for current and future mining and resources projects;
- An environmental impact assessment process for all significant projects; and
- Public availability of data, reports, decision-making and approval outcomes.

To the extent that rehabilitation of a mining and resources project may affect matters of National Environmental Significance (MNES), the Commonwealth already has regulatory powers to assess the impact, specify conditions through an approval, and monitor and enforce compliance through the *Environment Protection and Biodiversity Conservation Act 1999*.

Recommendation 1

No additional regulation by the Commonwealth is recommended, as the existing frameworks for Western Australia and the Commonwealth already provide appropriate mechanisms to regulate rehabilitation.

Recommendation 2

CME does not support mandatory backfill of voids. Assessment of backfill requirements should be completed on a case by case basis that considers the long term environmental impact of void retention. Where possible, useful purposes for voids and mine altered landforms should be targeted.

Recommendation 3

The Australian Government should continue supporting the Leading Practice Sustainable Development Program including periodic updates and sharing of case studies. Inter-government sharing of leading practice may be enhanced through the COAG Energy Council's Land Access for Resources Working Group.

Context

Mining and resources projects progress through multiple stages commencing from exploration, through project development and operations, to rehabilitation, closure and relinquishment. In effect, mining and resources projects are temporary land users, typically granted access through fixed-term leases for a period sufficient for operations and rehabilitation prior to relinquishing land for its next use. This next use varies, and may include agriculture, conservation and recreational purposes. Identification and achievement of this next land use is a critical component of successful closure and relinquishment.

In addition to this submission, CME supports the joint submission with the Minerals Council of Australia, New South Wales Minerals Council, Queensland Resources Council, the South Australian Chamber of Mines and Energy, the Tasmanian Minerals and Energy Council, and the MCA Northern Territory and Victorian Divisions, to provide a national perspective on the rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities. However, as regulation of mining and resource projects is predominantly a state responsibility, this submission focuses on how Western Australia's framework addresses the State's requirements making intervention by the Federal Government unnecessary.

Mining industry in Western Australia

Australia's mining and resources project outputs for 2015-2016 was valued at approximately \$158 billion, with \$88 billion (56%) from WA¹. In terms of current and future capital investment in the sector, as of September 2016, WA had an estimated \$97 billion of resource projects under construction or committed with an additional \$46 billion planned or possible¹. This makes WA's mining and resource sector the largest in Australia with the State producing at least 50 different minerals from almost 1,000 current operating mines².

Western Australia has a long mining history of greater than 150 years. The abundance of mineral wealth in WA combined with its long development history has resulted in the State's extensive understanding and experience with the industry, its social contribution, potential environmental impacts and the necessary regulatory framework for its management.

Existing Regulatory, Policy and Institutional Arrangements in Western Australia

The Australian Government Guide to Regulation requires consultation with other policy makers to avoid creating cumulative or overlapping regulatory burdens (Principle 6)³. Western Australia already has an extensive regulatory framework for rehabilitation of mining and resources projects. A brief summary of the key Acts and associated instruments follows, including the role of the relevant regulatory authority.

Environmental Protection Act 1986, Part IV – Environmental Impact Assessment and Mine Closure Plans

The *Environmental Protection Act 1986* (EP Act) establishes the role of Western Australia's Environmental Protection Authority (WA EPA). It has five members appointed by the Governor of Western Australia on the recommendation of the Minister for Environment. Importantly, the WA EPA is independent and not subject to direction by the Minister.

¹ Government of Western Australia, Department of Mines and Petroleum (2016), Statistics Digest 2015-16, http://www.dmp.wa.gov.au/Documents/About-Us-Careers/Stats_Digest_2015-16.pdf

² Department of Mines and Petroleum (2017), <http://www.dmp.wa.gov.au/Investors/Why-invest-in-WA-1499.aspx>

³ The Australian Government Guide to Regulation "Ten principles for Australian Government policy makers" (2014), https://cuttingredtape.gov.au/sites/default/files/documents/australian_government_guide_regulation.pdf

Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

A key function of the WA EPA is to provide Government with advice on the environmental acceptability of significant development proposals including mining, processing, refining and supporting infrastructure such as ports and railways. This advice is provided following a structured and transparent environmental impact assessment (EIA) conducted in accordance with the EP Act and the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*⁴.

During the EIA, the project's proponent is required to document the proposal, its potential environmental impacts and necessary environmental management controls and mitigation measures. Public comment and input from other stakeholders are part of the process. The WA EPA then considers the proponent's information, any public input, and advice from experts and other government agencies to recommend whether the proposal be implemented and if so, what environmental conditions should apply. The recommendation and its rationale are reported to the Minister for Environment in a public document which is subject to appeal.

Most recent projects assessed by the WA EPA have been mining and resources projects. Of the 48 mining and resource sector projects assessed since 2014, 37 (79%) have had a rehabilitation and/or closure condition recommended and subsequently applied by the Minister for Environment through a Ministerial Statement⁶. This is in addition to the requirements for rehabilitation and/or closure specified under the Mining Act (see section below).

Although the specific rehabilitation and/or closure conditions applied to each project may differ, contemporary conditions require, at a minimum, a Mine Closure Plan (MCP) developed in accordance with the "Guidelines for Preparing Mine Closure Plans"⁷. The WA EPA and the WA Department of Mines and Petroleum (WA DMP) have jointly developed this Guideline. It was developed to "*ensure that, for every mine in Western Australia, a planning process is in place so the mine can be closed, decommissioned and rehabilitated in an ecologically sustainable manner, consistent with agreed post-mining outcomes and land uses, and without unacceptable liability to the State.*"⁸

In accordance with the Guidelines, MCPs require periodic review, typically on a three-yearly cycle. This review ensures changes to a project are planned and accommodated, improved scientific knowledge and technology advances are incorporated and there is on-going stakeholder engagement throughout the project's life cycle.

Mining Act 1978 – Environmental Impact Assessment (Mining Proposals) and Mine Closure Plans

Under the *Mining Act 1978* (Mining Act), a Mining Proposal must be submitted and approved prior to the commencement of mining operations⁹. The Mining Proposal must provide information on the identification, evaluation and management of environmental impacts relevant to the proposed mining operations, that is, an environmental impact assessment of the project.

⁴ Available at http://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/Gg223.pdf.

⁵ Earlier versions of this document are *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*, *Environmental Impact Assessment Administrative Procedures 2010*, and *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012*. These are available at <http://www.epa.wa.gov.au/administrative-procedures>.

⁶ Ministerial Statements available from WA EPA website at <http://www.epa.wa.gov.au/all-ministerial-statements>

⁷ Department of Mines and Petroleum, and Environmental Protection Authority "Guidelines for Preparing Mine Closure Plans" May 2015. Previous version date June 2011.

⁸ Department of Mines and Petroleum, and Environmental Protection Authority "Guidelines for Preparing Mine Closure Plans" June 2011.

⁹ This includes prior to the commencement of construction activities necessary to facilitate future production.

Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

All mining and resources projects granted tenure under the Mining Act¹⁰ are also required to prepare and maintain a MCP in accordance with the “Guidelines for Preparing Mine Closure Plans”¹¹. As this is a joint guideline between WA EPA and WA DMP, this ensures consistent requirements for MCPs in WA regardless of whether those MCPs are required under the EP Act, the Mining Act or both.

Where a mining or resources project has land access or tenure not pursuant to the Mining Act (for example, Minerals to Owner, or some State Agreement Acts), the requirement for a MCP, where required, is applied through the EP Act and / or a State Agreement Act.

Mining Rehabilitation Fund

A recent advance in the WA regulatory framework has been the establishment of the Mining Rehabilitation Fund. This fund was established in 2012 following passage of the *Mining Rehabilitation Fund Act 2012* (MRF Act) to provide the State with a revenue stream to manage and rehabilitate historically abandoned mines in accordance with the State’s Abandoned Mines Policy¹² and Abandoned Mines Program.

All mining and resources projects operating on Mining Act tenure are required to contribute to the Mining Rehabilitation Fund (MRF)¹³ and report their disturbance and rehabilitation data annually to DMP¹⁴. All disturbance and rehabilitation data collected under the MRF Act is made publicly available via the DMP’s website both in raw data form¹⁵ and through an annual summary report¹⁶.

Importantly, the MRF does not remove a mining or resources project’s legal obligation to complete rehabilitation and implement their mine closure plan.

Abandoned Mines Program

Mining and resources projects have operated in Western Australia for over 150 years. Past regulation for much of that time did not mandate rehabilitation resulting in historic abandoned mines. To assist the State to better understand and quantify the scale and environmental impact of these abandoned mines, the WA DMP has completed a survey of abandoned mine features and compiled an inventory of these which is publicly available via their Mines and Minerals Deposits Database “MINEDEX”¹⁷. This database records all known mining features regardless of environmental impact or current level of rehabilitation, and ranging in scale from small prospector workings, costeans, tracks and historic shafts through to larger pit voids, tailings dams and waste rock dumps.

An extract of the MINEDEX mine features as of March 2017¹⁸ shows that more than half of the recorded features are classified as “shallow workings”, nearly 10% are considered

¹⁰ The Mining Act was amended in 2010 to require a Mine Closure Plan be submitted to WA DMP for approval as part of Mining Proposal applications received after 30 June 2011. Prior to this, Mine Closure Plans could be required through a Ministerial Statement issued under the EP Act or could be required (discretionary) under the Mining Act.

¹¹ Department of Mines and Petroleum, and Environmental Protection Authority “Guidelines for Preparing Mine Closure Plans” May 2015. Previous version date June 2011.

¹² Available at <http://www.dmp.wa.gov.au/Documents/Environment/ENV-MEB-201.pdf>

¹³ Tenements with a rehabilitation liability estimate (RLE) below \$50,000 must report disturbance and rehabilitation data, but are not required to pay a levy into the MRF.

¹⁴ Reporting is required regardless of whether or not the levy payment threshold is exceeded.

¹⁵ The most recent data release is available in Microsoft Excel format at: [http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_\(MRF\)_2016_Data_Release.xlsx](http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_(MRF)_2016_Data_Release.xlsx)

¹⁶ The most recent report, “Mining Rehabilitation Fund 2016 Yearly Report”, available at: [http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_\(MRF\)_Yearly_Report_2016.pdf](http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_(MRF)_Yearly_Report_2016.pdf)

¹⁷ MINEDEX available at: <http://minedexext.dmp.wa.gov.au/minedex/external/common/appMain.jsp>

¹⁸ Data extract from WA DMP’s MINEDEX database 22 March 2017

Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

rehabilitated, whilst just 0.1% are open cut pit areas with a depth of greater than 20m. This highlights the level of detail available for historic mining activities in WA as even small features and rehabilitated features are captured and publicly disclosed, whilst also demonstrating that the vast majority of historic abandoned mine features are minor in nature and pose a low environmental risk.

Unconditional Performance Bonds

Section 126 of the Mining Act allows the State to require an unconditional performance bond (UPB) from a tenement holder. UPBs were introduced in WA during the 1980s and became the dominant form of security to ensure the State was not exposed to unacceptable costs should a mining or resource project fail to meet rehabilitation requirements.

As part of the transition to the MRF, resources projects were able to seek release from their UPBs if they had made levy payments and were assessed as being of good standing. Consequently, the majority of UPBs in WA were released during 2013-2016. Establishment of the MRF however does not limit the State's ability to require an UPBs and these have been retained for operations that:

- Do not contribute an MRF levy (for example some State Agreement operations and Minerals to Owner);
- Have not yet co-ordinated release of their UPBs; or
- Are deemed by WA DMP as having a higher risk of the rehabilitation liability reverting to the State.

The criteria WA DMP use to assess risk of liability reverting to the State are documented in "The Administration of mining securities for mine sites regulated by the Department of Mines and Petroleum"¹⁹ and include consideration of financial standing, payment history and outstanding debts, compliance and enforcement.

Where a mining or resources project has land access other than through the Mining Act, (for example, Minerals to Owner, or some State Agreement Acts), the requirement for a financial security can be applied by the Minister for Environment under the EP Act (Ministerial Statement) and / or by the Minister for State Development when operating under a State Agreement.

Environment Protection and Biodiversity Conservation Act 1999 (Cwth)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) focuses on Australian Government interests related to the protection of matters of national environmental significance (MNES). To the extent that rehabilitation of a mining and resources project may affect MNES, the Commonwealth already has regulatory powers to assess the impact on MNES, condition it through an approval and monitor and enforce compliance through the EPBC Act. Where projects are considered under the Bilateral Agreement, the WA EPA will assess actions under the EPBC Act as part of WA's EP Act environmental impact assessment processes.

Given rehabilitation is predominantly a State-responsibility with the exception of matters covered under the EPBC Act, **no additional regulation by the Commonwealth is recommended, as the existing frameworks for Western Australia and the Commonwealth already provide appropriate mechanisms to regulate rehabilitation.**

¹⁹ "The Administration of mining securities for mine sites regulated by the Department of Mines and Petroleum" (May 2014) available at: <http://www.dmp.wa.gov.au/Documents/Environment/ENV-MEB-017.pdf>

Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

Transparency and Public Availability of Information

WA has a Whole of Government Open Data Policy²⁰ to improve management and use of the public sector's data assets. This includes greater release of appropriate and high value data to the public that are easily discoverable and usable.

In line with this Policy, and to ensure transparency and accessibility of decision-making and outcomes, WA has the following in place relevant to mining and resources project rehabilitation.

WA EPA public website www.epa.wa.gov.au

The WA EPA website was re-launched in December 2016 to improve transparency and ease of finding information. Although information included in the new website was previously available, the structure of the website made it difficult for infrequent users (such as members of the public) to navigate and find all available information for a specific project. Multiple views and search functions are now provided including a view by project linking documents for the full approvals process from "Stage 1 Referral" through to "Stage 5 Decision on proposal and implementation of proposal". This includes the final Ministerial Statement (with conditions) and the EPA Report that documents the EPA's assessment and recommendations.

WA EPA consultation and public comment hub <https://consultation.epa.wa.gov.au/>

The WA EPA maintains a centralised hub for all open consultations. This website also provides feedback on previous (closed) consultations including the submission made by various stakeholders. This website also offers an email subscription services that allows interested parties to be automatically notified when a consultation opens.

WA DMP Mining Proposals and Mine Closure Plans

The WA DMP's Transparency Policy²¹ specifies data, documents and information held by the Department is to be made publicly available in a low cost manner unless the information is confidential or legally restricted from disclosure. This is in line with the WA Whole of Government Open Data Policy. In many cases, public availability of information is directly through the WA DMP's website.

For example, the WA DMP has recently (February 2017) launched their Mine Closure Plan website²² which provides a link to all newly approved MCPs. Over time, as MCPs progress through their periodic (typically 3-yearly) review, this page will grow to contain all approved MCPs for WA's current mining and resources projects.

The WA DMP also makes other environmental related information public available via its website²³ including all approved Mining Proposals, tenement holders' Annual Environmental Reports and all environmental conditions on Mining Act tenements.

Mining Rehabilitation Fund

As previously mentioned, MRF data is publicly available both in raw data format as well as through an annual summary report.

²⁰ The Western Australian Whole of Government Open Data Policy is available at <http://gcio.wa.gov.au/wp-content/uploads/2016/05/open-data-policy.pdf>

²¹ Transparency Policy available at: <http://www.dmp.wa.gov.au/Documents/About-Us-Careers/Transparency-Policy.pdf>

²² <http://www.dmp.wa.gov.au/Environment/Approved-Mine-Closure-Plans-21214.aspx>

²³ WA DMP's Environment Division's Publicly available information website: <http://www.dmp.wa.gov.au/Environment/Publicly-available-information-19493.aspx>

Pit Voids

Depending on the nature of the ore body, mining and resources projects may result in formation of a pit void(s) over the project's life. In the case of bulk commodity mining in particular, such as iron ore, quarrying and coal, these voids may be large. The Australian Greens have called for mandatory backfill of voids²⁴ on the (incorrect) assumption that backfill of a void is automatically and always a better sustainable development outcome than retention or partial retention of the void. Such a view however, fails to recognise the following:

- Mine altered landforms, such as voids, can serve a useful purpose. The re-use of the landform as a void rather than its backfill may prevent the requirement to form new separate voids to meet these purposes. For example, voids may be used as water storage facilities , as (future) public recreational facilities (Lake Kepwari, Collie WA), entertainment areas (Quarry Amphitheatre, City Beach WA), aquaculture and food production (Ngalang Boodja Enterprises, Collie WA) and landfill or waste storage facilities (Woodlawn Bioreactor Landfill, NSW).
- Changes in processing capabilities, commodity demands and technology may result in certain grades of ore lower in a pit void becoming economic in the future. In addition, it may become economic to transition to underground mining of the deeper ore. Hence backfill of a void above mineralisation may sterilise ore of future value thereby reducing the State's mineral wealth and requiring new ore bodies to be discovered and subsequently developed.
- It may also be possible for a different operator to economically operate a particular mine given differences in overheads, vertical integration, capital availability and requirements and other competitive advantages. Hence transfer of a partially developed mine with lower grades and / or deeper ore will be a better option than backfill and sterilisation of the State's mineral wealth.
- Although mine sequencing in some instances can be optimised to maximise in-pit waste rock disposal, depending on the nature of the ore body and grades, some ex-pit waste storage will be required. Where ex-pit disposal is required, subsequent backfill of a void requires significant energy (typically diesel) consumption, which in itself causes environmental impacts. These impacts must be carefully weighed against the environmental impacts of long term (permanent) ex-pit storage, particularly given the advances in rehabilitation and waste rock dump design knowledge. In addition, low grade ore may be stored ex-pit pending future commodity price cycles and processing advances, hence backfill of this material would reduce future wealth for the State without necessarily achieving any environmental benefit.
- For bulk commodities in particular, even if waste rock disposal in-pit is viable and maximised, this cannot fill the void left by the removal of the bulk commodity. To require void backfill for bulk commodities, disturbance and excavation of other (intact) landforms such as hills and ranges would be required which would cause environmental impacts such as land clearing, energy consumption and emissions. It would be a perverse outcome to require clearing of an intact landform to fill a pit void especially when no significant environmental impact from the on-going existence of that void had been demonstrated.
- Partially filling a void (for example for bulk commodities where ex-pit waste is less than the void volume) may present a greater environmental impact than leaving a larger void. This is particularly where evaporation of a shallow void could generate high

²⁴ Securing Jobs in Mining Rehabilitation: New rules, a tough watchdog, filling final voids http://greens.org.au/sites/greens.org.au/files/2016-06-30%20Mining%20Rehabilitation%20Commissioner_final.pdf

Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities

salinity outcomes, where a deeper void may retain a fresher water quality or allow for recharge or pass through.

- Depending on the mining sequence and processing requirements, mine voids may be utilised as in-pit tailings facilities thereby avoiding the need to construct separate ex-pit facilities. Such an option should only be explored however after considering ore sterilisation risks as highlighted above. In pit tailings disposal will not result in complete backfill as freeboard must be maintained and terrain limitations are likely.

In some instances, where there are specific environmental risks such as acid rock drainage or salinity impacts to groundwater, backfill of a void may result in a reduced longer term environmental impact from mining. In such instances, the current WA regulatory framework would identify this risk as part of the EIA and hence condition requirements such as backfill in the projects approval and MCP.

Where the requirement to backfill is not driven by a specific environmental risk, it instead just artificially alters the economic viability of a resource and may therefore result in high-grading or non-development, diminishing the State's return on its mineral endowments.

CME does not support mandatory backfill of voids. Assessment of backfill requirements should be completed on a case by case basis that considers the long term environmental impact of void retention. Where possible, useful purposes for voids and mine altered landforms should be targeted.

Additional Role of the Commonwealth

During 2016, the Australian Government published updated documents within their "Leading Practice Sustainable Development Program for the Mining Industry" series for "Mine Closure"²⁵ and "Mine Rehabilitation"²⁶. This program was first launched in 2006 and is targeted at sharing Australia's "world-leading experience and expertise in mine management and planning" (Mine Closure, Page viii and Mine Rehabilitation, Page vii). The document provides guidance on leading practice for closure environmental, economic and social aspects through all phases of mineral extraction, from exploration to mine construction, operation and closure.

Additionally, sharing of leading practice, new case studies and lessons learnt (including from overseas jurisdictions) would aid the on-going development of the Program and ensure Australia remains a world-leader in mine management. The COAG Energy Council's Land Access for Resources Working Group may provide an appropriate forum for this leading practice sharing amongst the states and territories.

The Australian Government should continue supporting the Leading Practice Sustainable Development Program including periodic updates and sharing of case studies. Inter-government sharing of leading practice may be enhanced through the COAG Energy Council's Land Access for Resources Working Group.

Conclusion

The State of Western Australia has an existing regulatory framework for mining and resources projects that addresses the rehabilitation of mining and resources projects throughout their full life cycle to ensure appropriate rehabilitation outcomes. Critical aspects of this are:

²⁵ Available at: <https://www.industry.gov.au/resource/Documents/LPSDP/LPSDP-MineClosureCompletionHandbook.pdf>


²⁶ Available at: <https://www.industry.gov.au/resource/Programs/LPSD/Documents/Mine-Rehabilitation.pdf>

**Rehabilitation of mining and resources projects
as it relates to Commonwealth responsibilities**

- Environmental Impact Assessment to determine if a project may proceed and if yes, what rehabilitation and closure conditions should apply.
- Preparation and maintenance of a mine closure plan which requires periodic review and approval by the relevant government authority (WA DMP, WA OEPA, WA DSD).
- Environmental monitoring, reporting and public disclosure of performance throughout the full life cycle.
- Regulator auditing and inspection by multiple government authorities including the WA DMP, WA EPA amongst others.
- Requirement for unconditional performance bonds where the State has deemed there is a higher risk of liability reverting to the State.
- Annual levy contributions to the Mining Rehabilitation Fund to enable the State to amass sufficient funds to manage historic abandoned mines.
- Financial and reputational incentives through the design of the Mining Rehabilitation Fund annual levy contributions calculations to drive progressive rehabilitation.
- Assessment and on-going regulatory oversight of matters of national environmental significance through the *Environment Protection and Biodiversity Conservation Act 1999*.
- An established review and governance framework through the Office of the Auditor General and other government authorities to ensure public interest requirements are audited regularly and that State institutional arrangements are adequate.

CME welcomes the opportunity to provide a submission in to the rehabilitation of mining and resource projects as related to Commonwealth responsibilities and looks forward to ongoing engagement throughout the inquiry process.

If you have any further queries regarding the above matters, please contact Kane Moyle, – Manager – Natural Resources, on (08) 9220 8511 or k.moyle@cmewa.com.

Authorised by	Position	Date	Signed
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