



Government of **Western Australia**
Department of **Mines and Petroleum**

Response to submissions on DMP Strategy Paper: Transparency in Environmental Regulatory Decision Making

31 October 2011

Response to submissions on DMP Strategy Paper: Transparency in Environmental Regulatory Decision Making

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Introduction

On 24 August 2010 the Department of Mines and Petroleum (DMP) released a draft Policy Paper titled *Transparency in Environmental Regulatory Decisions within the Department of Mines and Petroleum*, for a three month public comment period.

The Department received comments from industry and stakeholder representatives and has now updated the Strategy Paper to address areas of concern identified by stakeholders. This document is a summary of the comments received and DMP's response to those comments.

While there were a variety of issues raised through the consultation process, there were four common topics that warrant specific mention.

Treatment of confidential information

Many comments highlighted concerns over publically available information containing items of a commercially sensitive nature. The intent of the Strategy Paper is to develop the criteria to be used by DMP when determining transparency arrangements not the actual transparency actions. Investigation of why information is considered commercially sensitive or confidential will only be required at a later time, when changes are proposed to current transparency measures.

There was strong support through the consultation process for matters of confidentiality or a commercially sensitive nature to carefully be considered by DMP when proposing specific changes.

Costs of increased transparency

The proposed criteria to determine the future transparency measures include the direct cost of any specific changes. There was a strong view expressed that transparency measures should not result in any increase in cost or time lines for approval. This has been incorporated into the updated Strategy Paper. As suggested the increased use of digital records including online lodgement means that increased transparency can be achieved without causing timeline delays. Having automatic updates of proposals and reports on DMP's website will have a minimal cost impact, but will not be cost-neutral as systems will need development and maintenance. The feedback received, supported approaches that have minimal cost impacts.

Need for consistency with existing protocols

There were a number of comments stating that the transparency measures for environmental decisions need to be aligned to existing practices within DMP. It is agreed that this alignment should occur where the existing arrangements are considered suitable.

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Clarity regarding the processes that will have increased transparency

Stakeholders commented that the exact transparency measures being proposed were not clearly defined. Rather than committing at this time, DMP is seeking to develop criteria that will be used to determine actual transparency measures. Consideration of such measures will be undertaken on a case-by-case basis and be subject to a separate consultation process.

The implementation of any new or revised measures will occur as part of DMP's ongoing regulatory reform program. Due to feedback regarding the cost of potential delays, it is proposed that current practices will change when systems are transferred to online lodgement and digital records tracking. DMP has already begun the delivery of this for some approvals and lodgements.

Summary of Department's Response to Comments Received on Transparency Strategy Paper

Comment	Department Response
Scope and general comments	
Apart from the possibility of making available future Annual Environmental Reports this discussion paper does not indicate any significant change in transparency in terms of public interest issues.	<i>The paper proposes the criteria that the Department will use to consider changes to the transparency arrangements, and makes suggestions at the end of the paper. It was not intended to be exhaustive as each suggestion will need to be tested against the criteria.</i> <i>A proposed criteria for considering transparency arrangements is "public interest" (number 3).</i>
[We] support any increase in transparency for environmental decisions made by the Department and do not believe any action which reduces transparency should be pursued.	<i>This support is noted. There is the chance, that if all regulatory practices are reviewed against the criteria, some existing practices are reviewed. The criteria presented should be tested against all arrangements (existing or proposed). The Department is of the view that if there are existing transparency practices in place that cannot be justified under the criteria, the Department will seek to have them amended.</i>
[We] are generally concerned that some of the transparency arrangements being considered will result in unwarranted public scrutiny of proposals and/or particular companies which would amount to no real benefit to industry, government or the community. This will particularly be the case if Programmes of Work, Mining Proposals and/or performance reports (such as Annual Environmental Reports) are made publicly available.	<i>The concern that the release of information could be used maliciously by other parties to frustrate resource development has been raised in a number of comments. It is recognised that individual operators, the industry as a whole, and the Department could be the recipient of such malicious action.</i> <i>However, it is ultimately considered that the preferred option is for there to be improved access to information upon which opinions can be formed; rather than the absence of information.</i> <i>The Department prefers that opinion on the environmental standards applied to the industry, and performance of the industry, is based on actual standards and performance, rather than the perception which can be easily manipulated if accurate information is not available.</i>

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Comment	Department Response
<p>If the document only relates to transparency arrangements for approvals why does it also suggest that Annual reports will be released? If the true intention is to make non-approval documents available then the aim of the strategy is incorrect.</p>	<p><i>The document was prepared to relate to transparency in the environmental regulatory decision making of the Department, not only approvals. The document states that the focus will be on approvals, but this will not be the only decisions which are relevant for consideration. The scope of the strategy has been amended to provide consistency within the document.</i></p>
<p>There needs to be a discussion between the industry and DMP on the type of information DMP proposes to release.</p>	<p><i>The paper includes suggestions regarding the type of information that the Department may consider releasing, and the Department has used this process as part of its consultation with stakeholders.</i></p> <p><i>The paper has also been amended to highlight that consultation will occur with stakeholders prior to changes being implemented to specific types of information.</i></p>
<p>Finally, [We] request that further details surrounding new transparency measures (including the implementation arrangements) be clearly articulated and open for further consultation before being introduced.</p>	<p><i>See above comment.</i></p>
<p>The strategy appears to hold a much greater bias to the client (companies) than to the owner of the agency (the Western Australian public) in regards to how information is treated. Generation of tax revenue is not the only factor the community holds an interest in. Decisions regarding transparency mechanisms should not be confined to those 'where there is a significant potential to improve regulatory decisions' nor should they be limited to areas of 'broad public interest'.</p>	<p><i>There are 10 criteria proposed in the transparency paper, and it is intended that each of these are used in determining the transparency measures which the Department will implement. The paper proposes that there are eight others besides these two noted.</i></p>
<p>In particular we oppose the suggestion of with-holding information for a period of time (eg 5 years) before it is made publically available. While some companies have very good consultation processes with local communities there are a number of companies who do not. In our experience some projects/activities, which interest the public, have no public consultation and do not engage when community members attempt to initiate it.</p>	<p><i>For information which is deemed to be commercially sensitive, the delayed release may be the only reasonable option available. However, it is acknowledged that this delay should be limited to circumstances that warrant it. It is recognised that some information may be of very little value to the community if released five years later, and therefore the paper has been updated to note this matter.</i></p> <p><i>Withholding some information for five years (geological results of mineral exploration) is an obligation under the Mining Act 1978; one of the criteria is adherence to existing statute (Criteria 8).</i></p>
<p>Should [point 2 of the guiding principles for transparency] not also include aspects they have an interest in?</p>	<p><i>This has been updated in the transparency paper.</i></p>

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Comment	Department Response
<p>The document states that there needs to be more transparency but does not discuss what this means in terms of DMP processing.</p>	<p><i>The primary purpose of the transparency paper is to establish the criteria to allow a consistent way for the Department to consider the various suggestions of transparency changes to be tested and compared to ensure that there is the maximum benefit to the community, industry and government. Once the criteria are defined, the Department will identify those processes which warrant consideration of review.</i></p>
<p>The document should make clear that it only relates to environmental regulatory decisions made in accordance with the <i>Mining Act 1978 (WA)</i>, the <i>Petroleum and Geothermal Energy Resources Act 1967 (WA)</i> and to a limited extent the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)</i> (where the Western Australian Minister for Mines and Petroleum is the “Designated Authority”). The Department of Environment and Conservation is properly “the” environmental regulator.</p>	<p><i>The wording of the scope of the paper has been amended to clarify these matters. The specific legislation is not listed so the application of the document is not unnecessarily limited.</i></p> <p><i>The document describes the Department as “...an environmental regulator...” not the environmental regulator.</i></p>
<p>The document only relates to transparency provided by proponents through the public release of information. There is a well-established body of administrative law setting out the requirements for procedural fairness (i.e. transparency and public accountability), which includes such things as giving a statement of reasons. This document lacks such measures, and consequently cannot properly be called a “transparency” document, it should be named “guidelines on release of proponent information”. We suggest that the Department seek advice from its legal advisors regarding the administrative law implications of the document prior to its finalisation.</p>	<p><i>Consideration was given to whether the title of the paper should be amended. However the paper discusses matters relating to decision-making, rather than just proponent information. The example of a “decision report” is included at the bottom of page 7; and as the Department is the decision maker, the decision report includes the statement of reasons (as well as the decision itself). The paper therefore is not considered to be lacking in this area. The policy document does not have administrative law implications; however the application of the policy to alter any transparency processes will involve consideration of legal matters.</i></p>
<p>Shouldn't the guiding principle also be determined by information/areas of interest to DMP?</p>	<p><i>At this stage it is considered that the interest areas of the Department are not a major contributing factor in determining the priority for transparency processes.</i></p>

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Comment	Department Response
Options for transparency arrangements	
<p>The dot points are not options for transparency, they are information types. Options for transparency would be:</p> <ul style="list-style-type: none"> • Advertising in the newspaper the Mining Proposal received, approved, rejected. • Website postings. • Newsletter. • A combination of the above. 	<p><i>The options are presented in the paper in that way to cover generic transparency options rather than publication methods or application types.</i></p>
Criteria 1. Fit within the controlling legislation	
<p>The discussion paper on transparency in environmental regulatory decisions seems to overlook that the over-arching legislation with respect to environmental assessment in this state is the EP Act. The MOU between the DMP and EPA assumes that projects that do not meet the EPA threshold for environmental significance can be appropriately managed. It is therefore necessary that both the EPA and the public can establish that this is the case. At the present time neither could due to the absence of transparency in DMP regulatory processes.</p>	<p><i>Neither the Environmental Protection Act 1996 nor the MoU impose transparency obligations on DMP.</i></p> <p><i>The current regulatory processes of the Department can mean that some approvals/documents are received, assessed and approved without public reporting. The policy paper intends to propose criteria to determine which approvals (or which other regulatory decisions) are subject to transparency arrangements. Many approvals are clearly not 'environmentally significant' and therefore reporting upon these would be unnecessary.</i></p> <p><i>Criteria 1 "Fit within the controlling legislation" intends to take account of whether the decision is environmentally significant or whether a trivial matter. The criteria has been redrafted (and retitled) to reflect this intent more specifically.</i></p>
<p>The example is a Mineral Titles activity and with the new systems available proponents are able to manage this themselves. A more appropriate example is required. This is also not an environmental approval activity.</p>	<p><i>This criteria has been redrafted to clarify the intent.</i></p>

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Comment	Department Response
<p>With respect to the cited statement from page 3 of the draft strategy paper, how does DMP intend to determine which proposals have a 'potential' for significant environmental impact?</p> <p>In accordance with the Memorandum of Understanding between the DMP and the Environmental Protection Authority (EPA), DMP formally refers proposals which are 'likely' to have a significant effect on the environment to the EPA. Part IV of the EPA Act already includes adequate transparency arrangements for such proposals. Is it DMP's intent to duplicate these existing transparency arrangements? What is the benefit of doing so?</p>	<p><i>This criteria has been redrafted to attempt to clarify some of these points. The intent is that because not all approvals/decisions have the same potential environmental impact, there may not be a compelling reason to apply the same transparency measures to all decisions. The Department intends to avoid these decisions of transparency being made on an application-by-application basis (see revised wording of Criteria 5 where it is clarified that the introduction of new arrangements will be where this is automated). Instead it is intended that the environmental significance of the decision will be considered at the "decision-type" level. Without prejudicing future choices, works approved under a Mining Proposal will have a greater potential for environmental impacts than those under a Prospecting POW; this would support the view to prioritise transparency practices differently for these two cases.</i></p> <p><i>The paper specifically proposals a criteria to ensure that transparency arrangements do not duplicate existing arrangements (Criteria 6: Existing transparency arrangements). It is considered that there is little benefit in duplicating existing arrangements and this will be avoided.</i></p>
<p>Criteria 2. Improving the quality of the decision</p>	
<p>Replace "...However in very complex matters, increased transparency may result in a more comprehensive statement on the material that was considered in reaching the decision" with "...However in very complex matters, increased transparency may result in a more comprehensive statement on the material and aspects that were considered in reaching the decision"</p>	<p><i>Suggestions incorporated.</i></p>
<p>Replace "...However in very complex matters, increased transparency may result in a more comprehensive statement on the material that was considered in reaching the decision" with "...However in very complex matters, increased transparency may result in a more comprehensive statement on the material and aspects that was considered in reaching the decision"</p>	<p><i>See above</i></p>

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Comment	Department Response
<p>DMP's strategy paper suggests that additional transparency arrangements will improve the quality of the regulatory decisions that it makes. [We] understand that DMP already has independently audited and ISO certified quality management systems in place to ensure that there is quality and consistency in decision making for environmental regulation. [We] fail to see how the proposed transparency measures could improve the quality of those environmental regulatory decisions.</p>	<p><i>The Department does maintain a certified quality management system. The quality management system is focused on the processes for decisions, and its implementation relies on technical knowledge being applied by the Department at each stage of the process. The Department may not always have direct access to all the necessary technical knowledge relating to decision making and therefore may wish to access this to assure the applicant and stakeholders that the best possible decision has been made. It is proposed to retain this criteria.</i></p>
<p><i>Some stakeholder comments relating to matters of confidentiality were raised under this section but have been addressed under Criteria 7.</i></p>	<p>-</p>
<p>Criteria 3. Public interest</p>	
<p>No comments received on this matter</p>	<p>-</p>
<p>Criteria 4. Potential for wider benefits</p>	
<p>Enforcement actions are not always approval related. There is merit in releasing this information but if the central reason for the paper is the sharing of approvals related information then this statement is out of context.</p>	<p><i>The document was prepared to relate to transparency in the environmental regulatory decision making of the Department, not only approvals.</i></p>
<p>Criteria 5. The cost of any specific transparency measure</p>	
<p>There is no excuse in the digital / internet environment for not making such documents available. Much of the added costs associated with the proposals in the discussion paper are due to the excessive 'filtering of information' rather than the provision of it.</p>	<p><i>It is noted that electronic lodgement should not significantly increase the costs of the approval process – although there will be some costs for systems development and maintenance. It is also acknowledged that filtering of information (or doubling up on information needing to be submitted) will also be an additional cost (unless this is able to be automated). Both of these issues are now addressed more fully in the transparency paper.</i></p> <p><i>Further, this comment supports that increased transparency measures should occur when processes are put online or made digital.</i></p>

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<p>Transparency in environmental regulatory decision making is generally supported by [us]. Notwithstanding that position, [we] have concerns regarding some of the objectives and the ultimate benefit of increased transparency as outlined in the DMP draft strategy paper. To elaborate further, [we are] seriously concerned with a number of statements made in the draft strategy paper:</p> <p>“The further expansion of transparency to environmental regulatory decision-making processes could significantly increase the time and cost of making decisions.”</p> <p>“The Department intends to apply transparency measures around decision making where there is the potential for significant environmental impact.”</p> <p>“It is likely that some delays in the approval process will be unavoidable with the inclusion of additional transparency processes. These lost opportunity costs will be borne by industry..”</p> <p>“The adoption of additional transparency practices may result in immediate direct and indirect costs to the Department and industry.”</p> <p>With respect to those cited statements from pages 2 and 4 of the draft strategy paper, [we] consider any unwarranted delays in approval processes to be unacceptable. Additional transparency measures must not compromise the Department’s ability to deliver predictable, reliable and timely regulatory decisions. Such delays would essentially undo the positive work that DMP has done to streamline approval processes in accordance with recommendations emanating from the Industry Working Group (Jones Report).</p> <p>Similarly, new transparency measure must not result in any actual or opportunity costs increase for industry.</p> <p>Factors such as increased costs and approval delays deter investment in mineral exploration and mining and cloud business decision making. DMP must carefully consider whether the benefits of increased transparency outweigh forecast increased costs and approvals delays.</p>	<p><i>Some of those sections of the draft paper as quoted have been amended to clarify the intent and to take account of these comments.</i></p> <p><i>These comments go further than supporting that costs are considered, and promotes that a ‘test’ for any changes to the transparency practices would be that the changes result in no time delays and no additional costs.</i></p> <p><i>Transparency practices cannot be achieved at zero cost – as there are requirements to maintain those internal computer systems (even when digital systems are used). However the test of “no delays to approvals” have been incorporated in the policy paper.</i></p> <p><i>It is anticipated that the way the Department will introduce changes to transparency measures will be at the time that systems/process reform is being delivered (for instance introduction of online lodgement). In this way any minor delays can be offset by savings in time through more efficient processes resulting in an overall reduction in approvals/decision timelines.</i></p> <p><i>The statement remains in the paper that the Department will undertake a cost-benefit analysis before changing specific transparency practices.</i></p>

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<p>The document states that it is likely that some delays in the approval process will occur as a result of additional transparency processes. While certain transparency measures can improve public reporting any increase in approval timeframes is not beneficial to government or industry and does not support the government's policy to streamline the approvals process.</p>	<p><i>The transparency paper has been amended to place a greater emphasis that delays in regulatory processes can be avoided and that costs should be actively minimised.</i></p>
<p>Aren't delays actually contingent on the method and level of transparency adopted? For example, if an application is received and decisions are advertised in the paper or on the web this would not result in a delay. Delays would occur if the intention is to provide the community with an opportunity to comment on the approval or proposed conditions. If DMP is planning to increase the engagement or input from the community then delays will occur.</p>	<p><i>The extent of delays and costs are contingent on the method and level, and considerable delays could occur if the wrong options are chosen. There has been little suggestion received to date that there is a need for additional community consultation periods in any of the environmental regulatory decisions which are covered by the transparency paper. This suggests that the desire for stakeholder transparency will not necessarily result in delays in decision making (although as indicated they are unlikely to be without cost). As indicated in the paper the actual arrangements will be assessed in a process-by-process manner.</i></p> <p><i>The paper has been updated to reflect these comments.</i></p>
<p>Criteria 6. Existing transparency arrangements</p>	
<p>This also occurs for Part V approvals – works approvals and prescribed Premises licences.</p>	<p><i>Example has been updated.</i></p>
<p>Criteria 7. Commercial and/or confidentiality issues</p>	
<p>This needs to be limited to mining operations. Annual reports associated with exploration are likely to contain information about exploration areas that are commercial sensitive.</p>	<p><i>This (and other below) comments have suggested that exploration documents are likely to contain information that is commercially sensitive. As indicated within the policy paper, this suggestion will require further detailing to clarify the specific commerciality of the information. The Department has not yet sought advice from the industry of the specific information within exploration proposals/reports which is commercially sensitive – however this will happen at a later time when the transparency process for exploration reports is considered.</i></p> <p><i>However this comment supports the retention of the criteria that the commercial sensitivity of information is considered prior to making any changes to transparency arrangements.</i></p>
<p>If these include annual report for exploration activities this would be considered commercially sensitive.</p>	<p><i>Note comment above.</i></p>
<p>Annual reports associated with exploration are likely to contain information about exploration areas that is commercially sensitive.</p>	<p><i>Note comment above.</i></p>

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Comment	Department Response
How much detail will be published? It must not include location information for exploration areas.	<i>Note comment above.</i>
How much detail? Must not include location information for exploration areas.	<i>Note comment above.</i>
Need to be careful about the level of detail released to the public associated with exploration programmes of work. This can compromise exploration potential and conflict with existing internal protocol within the Department.	<i>Note comment above.</i>
Be careful about the level of detail released to the public associated with exploration POW. This can compromise exploration potential and conflict with existing internal protocol within the Department.	<p><i>Comments above relate to the aspects of the confidential information criteria.</i></p> <p><i>Consideration was given following this comment as to whether the Department should consider as a specific criteria the preference to align transparency to existing protocols within the Department. The transparency paper has been updated to highlight that the Department will ensure measures are not inconsistent within the Department – however it is not proposed that practices should be aligned to existing practices simply because an existing practice is in place.</i></p>
The Environment Division should ensure that there are no conflicts with protocols already used by the Minerals Title area in relation to the confidentiality of exploration information.	<i>Note comment above.</i>
Why would industry provide this information [financial provisioning information] in an approval document? Aspects of this may be provided in closure plans.	<i>Financial provisioning information was only intended as an example. To avoid confusion the example has been removed from the transparency paper.</i>

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Comment	Department Response
Criteria 8. Statutory obligations	
<p>DMP may want to “truth check” this section as some of the statements made are potentially prejudicial and/or incorrect. For example, the statement that “where the existing statute is inconsistent with the objectives of transparency for environmental regulation, the Department will recommend to Government that legislative changes are considered”. This statement is misleading and concerning for the following reasons:</p> <ul style="list-style-type: none"> • there is no legislative basis in the statutes that the Department administers for “objectives of transparency for environmental regulation”, and the Department as a body of the Executive cannot make law by determining that such an objective exists; • there are sound reasons as to why there may not be “transparency” in environmental regulation such as commercial confidentiality and legal professional privilege (which are addressed to a certain extent in the document), and it would be highly inappropriate for the Department to seek to legislative changes in ignorance of these protections. 	<p><i>The statement refers to the Department making recommendations to Executive Government, and this has been clarified in the paper. The transparency paper does not state that the Department can make law, however it is able to make recommendations to the Executive Government.</i></p> <p><i>The Department is not constrained by the legislation it administers as to the recommendations it can make to Executive Government. Further, it is incumbent upon all administrative agencies to make recommendation on improved regulatory practices if these are apparent.</i></p> <p><i>On the second point, it is clearly appropriate for the Department to investigate and make recommendations to Executive Government on changes to legislation. If there are reasons beyond those of criteria list in the policy paper as to what the Department should consider in making specific recommendations then these should be highlighted.</i></p>
<p>The Western Australian <i>Freedom of Information Act 1992</i> (the FOI Act) gives the community right to request / apply for access to documents held by a State Public Agency. Not sure this section is legally nor technically correct. All FOI requests must be in writing just providing information to the community is not part of the FOI Act.</p>	<p><i>The document is not intended to relate to the administration of the Freedom of Information Act 1992. This legislation does however include Objects and Principles relating to transparency in government decision making and were used to assist in developing the criteria of this policy paper. Given that this background may unnecessarily complicate the transparency paper the section has been amended to remove the reference.</i></p>

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Comment	Department Response	
<p>What obligations exist under the Mining Act to release information to the Public?</p> <p>Sharing information on Mining Approvals is part of the Communities right to know principle.</p>	<p><i>The specific requirements and obligations under the Mining Act 1978 will be detailed in any decisions related to changing transparency arrangements.</i></p> <p><i>The “community right to know” is acknowledged by the Department, and this interest is one of the reasons for the Department preparing this transparency paper. The paper however indicates that it is not possible, and may not be the best outcome, for all information to be made publicly available (e.g. it may be very expensive to do so, it may be against the law). The intent of the paper is to set out the criteria so that an objective decision can be made on what information is made publicly available, and the priority adopted by the Department.</i></p>	
Criteria 9. Prejudicial material		
<i>No comments received on this matter.</i>	-	
Criteria 10. Legislative responsibility and harmonisation		
<p>References to “harmonisation” should be references to a “whole-of-government approach”. “Harmonisation” is used incorrectly in this context because “harmonisation” is where you seek to make all the laws consistent (for example - enacting the same laws relating to mining as in another State).</p>	<p><i>The title of this criteria has been amended to address this concern.</i></p>	
Specific transparency measures proposed		
<p>Of the options for transparency arrangements proposed in DMP’s paper, [our] preference is the public availability of the criteria and processes used by the regulator in decision-making. This option does not pose the risk of disclosing commercially sensitive and/or confidential information as do the other options such as public availability of application details and/or company annual reports.</p>	<p><i>This comment supports that the publication of standards and processes for making regulatory decisions should remain a high priority of the Department. This has been incorporated into the transparency paper.</i></p>	
<p>The document does not discuss where an increase in transparency will be employed.</p>	<p><i>The primary purpose of the policy paper is to establish the criteria to allow suggestions to be tested and compared to ensure that there is the maximum benefit to the community, industry and government. Pages 7 and 8 provide proposals of where increases in transparency may be employed.</i></p>	

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Comment	Department Response
<p>Proposal to release tenure holders reports required by the Department</p> <p>What is the statutory reason for this? Reports released to the public by other agencies or required by the agency to be release are prescribed in legislation or via conditions of approval. What would be the bases or justification by the DMP except for the Community right to know theory?</p>	<p><i>The basis for the proposal is to further the guiding principles for transparency presented in the policy paper. The method for releasing the information has not been decided (or if in fact if it will even occur although this is the general intent of the Department). The methodology adopted for transparency needs to be assessed in each case (against the criteria in the paper), however it could be that the public release of the information is either coordinated by the Department or the tenement holder.</i></p>
<p>Proposal to release annual environment reports</p> <p>This is not an approval activity.</p>	<p><i>The document was prepared to relate to transparency in the environmental regulatory decision making of the Department, not only approvals. The document states that the focus will be on approvals, but this will not be the only decisions which are relevant for consideration. The scope of the strategy has been amended to provide consistency within the document.</i></p>
<p>Proposal to release annual environment reports</p> <p>Further, releasing AERs is not an approval activity but a verification of compliance.</p>	<p><i>Note comment above.</i></p>
<p>Proposal to release annual environment reports</p> <p>If this includes annual reports for exploration activities this would be considered commercially sensitive.</p>	<p><i>Note comments on confidentiality under Criteria 7.</i></p>
<p>Proposal to release annual environment reports</p> <p>Should AER's be released there are likely to be legal issues and concerns as to what purpose the AER's would be used.</p>	<p><i>Legal issues are addressed in response to the comments received under Criteria 7. It is acknowledged that some individuals may access approvals, reports or decision reports and use these for malicious purposes, however this is not considered a reasonable basis for not introducing transparency arrangements.</i></p>
<p>Proposal to release annual environment reports</p> <p>At present under the Mining Act and Regulations it is not possible to release an Annual Environment Report (AER) without the written approval of the Tenement Holder, or if the document is more than five years old.</p>	<p><i>The statutory obligations upon the Department are a specific criteria (Criteria 8) for consideration and will be fully investigated before any decision is made on specific transparency arrangements.</i></p>

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<p>Proposal to release annual environment reports</p> <p>The new AER Guidelines now require compliance reporting against tenement conditions, which include complex mining proposals, (and in the future closure plans) all of which are open to interpretation. When the Guidelines were drafted no credible suggestion was made to change the legislation and make AER's publicly available as there were concerns expressed that these could be misread and the wrong assumptions arrived at. The strategy does not address this issue.</p>	<p><i>It is proposed through this transparency paper that there is decision making process to determine the appropriateness of a greater level of public reporting of the performance of the industry against conditions of approval. The detailed assessment of whether (or how) AERs are made publicly available will assess these aspects.</i></p> <p><i>Based on this comment, the Department considered whether there was a need for an additional criteria to cover the aspect where the release of information was likely to result in no foreseeable benefit to the community (i.e. only used in a malicious way). However it was considered that this was not necessary, and that the preference should be to ensure that the information is concise, specific and unambiguous.</i></p>
<p>Proposal to release enforcement action information</p> <p>The Department should only release enforcement or prosecutions that have been determined.</p>	<p><i>This has been confirmed in the transparency paper, and is clarified in the Department's enforcement and prosecution policy.</i></p>
<p>Proposal to release enforcement action information</p> <p>With respect to enforcement, [we] consider that public reporting enforcement actions taken by the Department could damage voluntary and cooperative actions from the industry. Careful consideration is needed to ensure transparency arrangements for enforcement actions to achieve the desired outcome, which as [we] understand, is to deter non-compliance. This may be better achieved by having more DMP staff in the field to guide and inform industry rather than relying on sanctions to act as a deterrent.</p>	<p><i>The reporting of enforcement action will only occur where that action has been determined in accordance with the governing legislation.</i></p> <p><i>The Department takes seriously non-compliance by operators with conditions of approval (and other obligations under legislation). The notification of non-compliance to the wider industry is intended to be as a wider deterrent to non-compliance.</i></p> <p><i>Increasing the time that Departmental staff can spend in the field will assist in environmental performance of the industry, but does not support the suggestion that enforcement action taken by the Department should not be publicly reported.</i></p>

Response to submissions on DMP Strategy Paper: Transparency in Environmental Regulatory Decision Making

Comment	Department Response
<p>Other</p> <p>The minimum requirements for transparency that [we] have identified to facilitate public-interest inquiries are:</p> <ul style="list-style-type: none"> • the web-posting of all exploration, mining and mine closure plans received by the DMP by mineral field (this is the minimum requirement to facilitate 3rd party appeal rights under Section 38 of the EP Act). • statements of decision by the DMP environmental officers giving reasons for non-referral to the EPA (under the MOU), including information relied upon in making those decisions; • Annual Environmental Reports • DMP Inspection Reports • Project Completion Reports. <p>These basic transparency requirements have been brought to the attention of the EPA.</p>	<p><i>These suggestions are noted, and will be considered for future investigation by the Department.</i></p> <p><i>The use of the website for information dissemination appears a preferred method which is now noted in the paper.</i></p> <p><i>These comments support the proposal that the Department will investigate “publishing details of applications received/ approved” and assess them against the criteria in the paper. The release of all Departmental Inspection Reports is not proposed to be prioritised at this time. Other suggestions of completion reports and annual environmental reports are already envisaged by the transparency paper.</i></p> <p><i>The matters relating to reporting on statement of decisions regarding referral of proposals to the EPA is envisaged to be included within the intent to “...publish details of decisions...”</i></p>

Response to submissions on DMP Strategy Paper: Transparency in Environmental Regulatory Decision Making

Comment	Department Response
<p>Other</p> <p>[We] would like to see the public to be able to access:</p> <ul style="list-style-type: none"> • Details regarding individual applications and supporting documentation • Details of conditions of authorizations issues • Guidelines used in decision-making process • Annual reports on environmental performance by operations/tenement holders. 	<p><i>Conditions of authorisation and guidelines used in decision making are already provided on the Department's website. It is noted that there is support to retain (and expand) this access and this has been strengthened in the policy paper.</i></p> <p><i>This comment also supports that applications and annual reports are investigated against the criteria to determine whether a change in transparency processes is appropriate.</i></p>
<p>Other</p> <p>DMP receives many comments and recommendations from other agencies when the Department is assessing proposals. Some of these comments and recommendations can have implications for the proponent and the project under consideration as they can include recommendations for work, offsets, are at times outside the jurisdiction of that agency, and can represent the personal values of the author. These recommendations are then considered by the environmental assessor in the approvals assessment. If true transparency is the objective of the Department the proponent should be given the opportunity to see the recommendations and have the right of reply.</p>	<p><i>The transparency paper has been updated to reflect that the Department will investigate ways to make available to applicants formal advice that is received by the Department from another agency which is used in decision making.</i></p>



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