

**STANDING COMMITTEE ON  
ENVIRONMENT AND PUBLIC AFFAIRS**

**PETITION NO 7 — LEGACY OF MINING**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 21 AUGUST 2013**

**SESSION ONE**

**Members**

**Hon Simon O'Brien (Chairman)**  
**Hon Stephen Dawson (Deputy Chairman)**  
**Hon Brian Ellis**  
**Hon Paul Brown**  
**Hon Samantha Rowe**

---

**Hearing commenced at 10.45 am**

**SELLERS, MR RICHARD**

**Director General, Department of Mines and Petroleum, sworn and examined:**

**GOREY, DR PHIL**

**Executive Director Environment, Department of Mines and Petroleum, sworn and examined:**

**BRIGGS, MR IAN**

**General Manager Environmental Policy, Department of Mines and Petroleum, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I have to ask our witnesses to take either the oath or the affirmation.

[Witnesses took the affirmation]

**The CHAIRMAN:** Thank you. Gentlemen, you will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

**The Witnesses:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, I ask you if you would please quote the full title of any document you are referring to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make too much noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of parliament, and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Sellers, before we turn to our questions, would you like to make any introductory remarks to the committee?

**Mr Sellers:** Thank you; I would. Basically, the introductory comments are really that this is an issue that has been going for a few years. I just want to set a little bit of a time line out and then, if you will indulge me, we have got quite a bit of paperwork that I will ask Ian to run through, so you have the context of the documents you have in front of you.

Back in 2010, to September 2011 the Auditor General undertook this review of the department and the compliance with mining conditions. When that report was released the then minister, Mr Moore, wrote to the standing committee on receipt of petition 143, which was the original petition. It is actually the main content of that petition that has been replicated in the precursor of getting us here today. We have subsequently written several times on updates on the recommendations, but just to put it into a very simple précis, the Auditor General’s report was looking at the agency when we were undertaking a change from prescriptive legislation to a risk-based approach for our environmental process. The report reflected that this change is very likely to be successful and also commented in some detail on our prescriptive approach and did in fact find that any environmental

issues happening around the state were acted on, but also the report was quite critical about some of the prescriptive practices that were going on at the time.

[10.50 am]

When the report was tabled the recommendations were accepted by government, and we started working on them. We have reported to this committee and others several times on that. One of the major changes we have undertaken since 2011 is that we have engaged with the community and with our key stakeholders to look at how we best drive that shift from a prescriptive to a risk-based approach. So we had a six-month process. We had a ministerial advisory panel formed that had membership from the key lobby groups—the Conservation Council of Western Australia and others—that looked at the report and everything else that was going on in industry at that stage, and our act and our practices, and put together a report, which was then put out for consultation. It was put to government and accepted by government. The recommendations were accepted and we are now in the process of driving those reforms. And so, the reason for having quite a series of documents there is that the documents actually just go through each of those stages as we go along, including the most recent report that was tabled, put with Minister Moore and accepted, and the policy initiatives that have come from that around the initiatives that are actually now being implemented, and overseeing the implementation of those is a committee that has actually got a slightly broader context than the ministerial advisory panel that we had to build it up, in that, as well as having the Conservation Council of Western Australia, it has the Environmental Defender's Office on the oversight committee that is looking at how we implement those recommendations. So, with your indulgence, I will just have Ian quickly run through the papers in front of you so that you have some context, and then I am happy to answer questions.

**The CHAIRMAN:** Thanks for that. Mr Briggs, over to you.

**Mr Briggs:** Two sets of papers are provided here. One is the minister's comments back to the original petition 143, and then there were subsequent questions asked by this committee of the advice that our minister provided. In the first submission, or petition 143, there were five questions asked, and we provided those answers. Later this committee asked for further details on those, and there were about 12 questions on those. The latter two, addressed to your committee, reflect those updates of the questions we provided back early in 2012. In addition to that, we have had the Public Accounts Committee also ask us questions on the Auditor General's report, and we have provided those as well. So there are two separate letters. They are both addressed to Mr Matthew Bates of the Public Accounts Committee. The earlier one is dated 25 January and the other one, later that year, was 24 September. They contain the details of what the Auditor General raised in his review of our regulatory processes within the department. One of the questions raised in the Auditor General's report was about our record-keeping system. I have also given you a copy of some of our statements that we made about our record keeping and also the report that came back from the State Archivist and the executive director of the State Records Office, taking our questions to the State Records Commission for its consideration, and they found that our record-keeping practices are consistent with the record-keeping plan of the state.

The other documents relate to the reforming of environmental regulation. The red-covered document is one of the earlier ones when we were looking at the transparency and environmental regulatory decision. The ministerial advisory panel to address these sorts of things made its report sometime later, after about—was it a two-year review?

**Mr Sellers:** The final—six months.

**Mr Briggs:** This report "Reforming Environmental Regulation in the WA Resources Industry" is their report to the department and the minister. It makes 14 recommendations on those matters that not only have been raised by the Auditor General in his review but also in other reviews that have been undertaken about our processes, such as, early on in the piece, by the industry working group and other ones which are listed in the report about how we go about the reforming of our regulatory

processes in the department and also across agencies, because there is duplication in our assessment and approvals process and how we put on conditions. That addresses that duplication between agencies as well as the legislation. It makes recommendations on how we might make that clear. I am sorry I have just got a bit out of sequence here, but there is also a letter attached between our minister and Cheryl Edwardes, who headed up that ministerial advisory panel, confirming their job had been done and that their report was being made. There is also a new advisory panel for the regulatory environmental review that has been established. One of the documents we thought we might put to you just to illustrate the sorts of things that we are doing is this one with the traffic lights on it—the key feature of the recommendations, what our objectives are and what our milestones are, and how we are tracking on meeting each of those recommendations that the ministerial advisory panel made to us.

**The CHAIRMAN:** That document is on the letterhead of the government of Western Australia Department of Mines and Petroleum, status report, updated 12 July 2013.

**Mr Briggs:** That is correct, yes.

The larger document, which is just giving you an example of how we have gone through our reforming of regulatory practices, particularly how we deal with the industry in particular, is our guidelines for preparing mine-closure plans. That is an example of a key issue that had been raised about how we relinquish titles and how companies must develop up their mine-closure plans. It covers things like consultation with the community and other stakeholders on how you might finish that mining program by any company. There is a mandatory reporting back to us through their annual environmental reports and other documents like that.

**Mr Sellers:** It might be worth just noting that the annual environmental reports now are transparent. They are lodged online once they have gone through a short process internally. They are transparent and there for anyone who wants to read them. In the past, they were documents that had a commercial-in-confidence criterion on them and stayed within the department. A lot of the issues that had been raised by stakeholders and interest groups, such as the Conservation Council, have been around transparency, and so that transparency document—the red one that Ian referred to—led to some immediate changes. Getting the annual environmental reports online for people to read shows what company is doing; if there has been an incident; how they have reacted to it; what we have done in terms of responding; and what they have agreed to do to work it out over the next period of time. People can track that through the annual lodgement of those documents.

**The CHAIRMAN:** Thank you for these documents. That has certainly given us a lot of material, and we are aware that it is a very broad area that we are inquiring into. Just by way of my opening remarks, the genesis for the committee's interest was of course with a petition tabled in the last parliament, number 143.

[11.00 am]

As you have already alluded to, there has been a whole lot of correspondence about that. An identical petition was tabled in this Parliament, which conveniently allows this committee to continue the work of its predecessor. So I am aware that a lot of these matters that you are talking about are works in progress. The petition itself relates to the Auditor General's report, which is from back in 2011. We have used that as our starting point as well. Thanks very much for all the material that you have provided, which we will not be able to thoroughly analyse today, but we do have some questions that we would like to put to you.

Given the ongoing nature of this inquiry and that, in effect, as you have already indicated, some of the correspondence is about progress being made over the last few years, if you want to respond to any of these questions or if they seem repetitive, please feel free to refer to some of the papers or other documents that you have tabled by way of a response, because I am aware that some things just keep recurring as we review progress. We will structure our questions around the Auditor

General's findings. To take the first bracket, as it were, on pages 19 and 20, the Auditor General found generally that the management of environmental offsets is inadequate, with poor record-keeping and transparency, and noting—(a) the establishment of offsets is ad hoc, (b) it is not clear what offset arrangements exist or their purpose, and (c) it is not clear whether environmental offsets have been delivered. That was the finding of the Auditor General several years ago. In relation to environmental offsets, I would ask, can you explain the purpose and nature of environmental offsets; when are they established; what type of mines are usually involved; and are they generally high risk?

**Mr Sellers:** Thank you for the question. Since that date, there is now actually a statewide policy that has been put out. It basically in a nutshell says that an offset will be considered if, after going through an environmental approval process, there is a significant environmental impact that is not manageable through normal activity. A normal activity might be that when we approve a mine development we also approve the mine rehabilitation and the actions that take place over the life of that mine. If at the end of that and the end of the rehabilitation, there is still a significant environmental impact, then there is an offset to be determined for that site. That offset is typically determined through the Office of Environmental Protection Authority's process. Our role in offsets, since the Auditor General's report was written in 2011, has shifted markedly, and it is now centralised, and the approval stage, with the OEPA. Since they have put out the broad guideline, they have been negotiating with the industry on a set of distinct guidelines that they will use in the approvals process going forward, which will also consider combined impacts, such as for an area like the Pilbara, where there might be a combined significant environmental impact with cumulative projects. We input into that, but the administration of the offset will be through the conditions set by the Office of the Environmental Protection Authority, and if we are required to do part of that, then we will be reporting back through that structure. Dr Phil Gorey has been our representative on a range of the policy development panels of that. Perhaps I will just defer to him to add any more value to that question.

**Dr Gorey:** Just to reiterate, at the time the Auditor General's report came out there was no single government policy on environmental offsets. That was published in September 2011, in the end—the offsets policy. The other thing that has also progressed across government is an offsets register, which is now live, which actually combines the regulatory activities of the Department of Mines and Petroleum, the now Department of Environment Regulation and the Environmental Protection Authority. If there are any conservation offsets imposed under any of those agencies' activities, they are published on the offsets register, which is actually a public document. Even before that was the case, offsets that were applied by native vegetation clearing permits, which is one of the mechanisms that can apply conservation offsets, have been transparent. Those permits are actually published on the government's websites, and that has been the case, as I understand it, since about 2006. So there has already been that level of transparency. I think it is fair to say that since the time of the Auditor General's report coming out, the government has now got a published policy that has been in place for a number of years, that has got established arrangements between the agencies to work on implementation and administration of that, and there is a public register in place.

**The CHAIRMAN:** Just to go back to basics, what is an environmental offset?

**Dr Gorey:** Broadly, as Richard Sellers was saying, the concept arises out of the understanding and the intent of no discernible environmental degradation. So developments and land management practices should not degrade the environment any further than what is currently the case. That is in the concept of quite an altered environment that Australia is. We have got a significant amount of land clearance in different states and different areas. We have got water degradation. The concept is that we want economic development to occur with a positive environmental outcome, and conservation offsets are generally used across most jurisdictions in Australia; they are not unknown. For the theory of a conservation offset to work, it fundamentally requires a good regulatory system and that your regulatory system, your application process, means that whatever risks of

environmental degradation are there, are minimised and as much occurs to make sure that unnecessary impacts are avoided and that if some sort of impact is necessary, it is minimised and that if an impact is needed, the significance of that impact is needed, and it is that hierarchy of assessments. But the logic says that even in considering all of those things, there will at times be some occasions where there is a significant residual impact from the development, and when you consider that in the context of social, economic and environmental outcomes, there will still be a positive for that development but there is a significant residual environmental impact. In those circumstances the theory is that you would apply a conservation offset to somehow offset that impact. That is kind of the intent around it. Logically it has been used across Australia for native vegetation clearance, particularly in the eastern states for longer perhaps than in Western Australia. At that level I think most people would agree it has merit. It is inherently difficult to administer, though, because most environments are unique to some degree, and so it is difficult to find an exact like environment to somehow protect to offset.

[11.10 am]

Vegetation is easier in some ways. I think the government through its policies has articulated the intent of what it is trying to achieve through the conservation offset policy. The work of the agency is to make sure it is administered in a way that is transparent, that there is as much science behind the decisions of when offsets are applied and that the outcome of an offset reflects the intent of why it was imposed.

**The CHAIRMAN:** Let us say you have got a mine site, a portion of which will be permanently degraded or is beyond rehabilitation for some reason or other.

**Mr Sellers:** For example, a pit.

**The CHAIRMAN:** For example, a pit. What might the offset be in that hypothetical situation?

**Dr Gorey:** Assuming that we would go through the process of ensuring that the impacts were minimised and all those types of things, you have some ability to adjust pits but pits need to be where the ore body is. You do not have as much flexibility as you have with other infrastructure on a mine site certainly. We would still need to assess the environmental significance of whatever was impacted. We will use vegetation. The vegetation has been cleared. Is that residual impact significant, because, you are right, you will not be able to rehabilitate a pit with a similar environment that was there before? Certainly it would tick the box about it being a residual impact. Is it a significant residual impact would be a question about, is the ecosystem of that area significantly impacted by the absence of that vegetation?

**Mr Sellers:** It might be worth just giving an illustration from another state of where that has been used. There is a very famous study of a strategic impact assessment that they did for the growth around Melbourne. So this is a commonwealth offset driven discussion. When they were doing some of these subdivisions, they were taking away things like liverworts and grass trees that existed in certain swampy areas, and that was deemed significant because those particular plants did not occur in very many places around Melbourne, whereas if they had just taken that same subdivision over a bit of farmland that was pasture and did not have the native veg, then it was not deemed to be significant. Typically in that study they replaced those areas that had, say, the liverworts and that on it with a large area of liverworts that was further out from the area that they subdivided. So they had to do a significance test and then, when they passed the significance test, go to try to find a similar example, which, as Phil said, is very hard to do. It does not always have to be like for like, though. Another example is the ConocoPhillips LNG plant in Darwin. One of the significant issues at the end of that was the amount of carbon dioxide that they vent to the air from the mixture of gas. So the offset, again through the federal system, that they agreed for that was a different burning strategy for north east Arnhem Land that was maintained by the traditional owners of that land and the Aboriginal rangers up there, whereby going through a different burning program, they sequestered more carbon, and that actually offset. ConocoPhillips funded that program as its offset.

It can be an offset that looks at the management strategy for an endangered animal even. McArthur River is one that I know well from the Northern Territory. Their offsets for saw sharks in the McArthur River was a management strategy for the Gulf of Carpentaria for saw sharks, as the offset for the probable impact the expansion of their mine had on the saw shark ecosystem in the McArthur River. So it can be like for like; it can be something that directly interacts, like carbon dioxide and carbon sequestration; or it can be research around the organism, the issue or the environmental factor that is deemed significant. Sorry, Phil.

**Dr Gorey:** The issue is about the preference for direct or like for like, and recognition of that is actually quite difficult and therefore it actually allows this either indirect, which is sometimes a term used, or some other supporting offset arrangement.

**The CHAIRMAN:** I think that probably helps my understanding of that. It is a complicated issue, so thanks for that. Are there any further questions on the question of environmental offsets?

**Hon STEPHEN DAWSON:** I am pleased this is finally here, because, regardless of whether it is AMEC or the Conservation Council, everybody on either side had a concern about environmental offsets. So it is good that the policy is there. I note that the register has only been up and running for about a week, so it will be interesting to hear some feedback from people about it. Which agency is now responsible for that register? Is it the new Department of Environmental Regulation?

**Dr Gorey:** It is not actually the Department of Mines and Petroleum, as I understand it. It is the Department of Parks and Wildlife.

**The CHAIRMAN:** Let us move on to the finding of the Auditor General about monitoring enforcement needs. The Auditor General found that monitoring and enforcement needs significant improvement. “We cannot give an assurance ... if environmental conditions are delivering the desired outcomes ... we have concerns about the reliability of DMPs monitoring and compliance information.” That was a finding of the Auditor General at page 24 of his report. There is a series of questions I would like to go through about that. In relation to environmental conditions, what would constitute a major, moderate or minor noncompliance with environmental conditions?

**Dr Gorey:** Very briefly, major noncompliance would be that noncompliance which would trigger an active enforcement action by the department, and there are thresholds around that, but that would effectively be where the department takes enforcement action of issuing fines, giving directions, and on a small number of occasions issuing stop-work orders.

**The CHAIRMAN:** Can you provide an example to illustrate what might trigger that?

**Dr Gorey:** Operating outside of an approval, where continued operation is likely to continue to cause environmental harm.

**The CHAIRMAN:** Okay. What about a moderate?

**Dr Gorey:** A moderate would be where the activity is being undertaken, which is not directly resulting in significant harm, but is outside of compliance and has a risk of environmental harm.

**The CHAIRMAN:** Okay. And minor?

**Dr Gorey:** Minor would be where it would be considered a breach of obligation but it is unlikely to cause a significant environmental impact. So that would be things like, perhaps, not submitting a report on time. The submission of the report is not necessarily going to lead to a significant environmental impact, but it would undermine the regulatory process if this action was not taken.

**The CHAIRMAN:** How many cases of noncompliance with environmental conditions would you have in each category for a year, approximately?

**Dr Gorey:** I would be guessing. I would probably need to check that, if that is okay.

**The CHAIRMAN:** Do you want to take that on notice?

---

**Mr Sellers:** We are happy to take that on notice. It might be worth just adding that that is the issue between prescriptive and risk-based. Over the year the Auditor General was looking at it, it was also reported in there that there was nothing that happened on the mine site that was brought to their attention that we had not already found and acted on. But in prescription, if you want to go and check every letter of the law, then you really need to visit a site each year and go through that big prescriptive list and look at all the conditions. On a risk base for a number of factors—past performance, the environmental risk factors and all the others—you target in on high-risk sites and spend your time looking at where the problem is likely to be.

[11.20 am]

That created some confusion, and the report reflected that. So with prescription moving to risk, you are not looking at everything every day. We would need hundreds of people. We need people in education and health. So we have to have a risk-based approach. We are implementing that risk-based approach. In doing that, they recognised that we are picking up all the issues, but highlighted the fact that, in consultation with industry, our regulations were not keeping up with our change, which led us to the AER process.

**The CHAIRMAN:** With the question that you have taken on notice then, just to lock it down, we are looking at how many cases would you find per annum of noncompliance with environmental conditions and what percentage of inspections would identify noncompliance. Mr Sellers, if you wanted, in your response, to compare and contrast the former regime with what is happening now under the risk assessment regime, that would be extremely useful as well if you could do that. So if we could have that information on notice, we will move on.

You have already touched on this in a previous answer, but what action is taken by DMP when noncompliance is identified?

**Dr Gorey:** The enforcement action is governed by an enforcement prosecution policy, which the department has and which is published. Logically, it is a scale of responses proportionate to the level of the offence. They would commence from the very simple things with verbal directions, particularly with inspections. At the end of each inspection our officers actually provide a report to the site being inspected. Any noncompliance identified would be identified in the inspection report, and we would have an action plan on when that needs to be followed up and what action needs to be taken with that. For the more serious, where a more detailed or more interventionist approach is needed, the department can commence a formal investigation, which may lead to enforcement action or commencement of forfeiture action under the act. Officers have the ability to issue what are termed directions to modify, particularly under the Mining Act, which is effectively an enforcement order, and also have an opportunity to issue a stop-work order. A stop-work order effectively is for the very serious matters where it is an order for the business to stop operating because any further operation will conceivably continue to lead to significant harm. We do not issue a large number of those, primarily because we rarely have the situation where things have got so far out of control that a stop-work order is actually needed to prevent harm. The number of those each year would be less than 10 as a proportion.

**The CHAIRMAN:** Is information about instances of noncompliance made public?

**Dr Gorey:** It does. One of the criteria for consideration in the department's enforcement prosecution policy is the level to which there needs to be a general or specific deterrent. We obviously recognise that for there to be a general deterrent of enforcement action people need to be aware of it. We have, as a department, a series of electronic newsletters and subscriptions on our website. There is a special subscription to the environmental news. There is one particularly focused on safety and there is one particularly focused on mineral titles. At the last count I think we had 1 500-odd subscriptions of stakeholders to our environmental newsletter. When we have enforcement action like this, we use that newsletter to describe the issue that has come out and as, I guess, a warning. We do not necessarily list that this tenement holder was fined this amount,

because as a deterrent it is not all that useful to other people if all they know is a name and an amount. What is important it is that they understand why the government took particular action and what the government will be focusing on in the future. That is how we do that.

**Mr Sellers:** And also a company is obligated to describe in its annual environmental report what it has done and how it has met or not met its conditions and other things on its licence. They are public documents once they have gone through the initial process in the department and made available online.

**The CHAIRMAN:** That does identify the operator.

**Mr Sellers:** That identifies the operator; it is their report, and so they would write in there that there was a noncompliance issue—“We worked with the department; we have resolved by doing X.” That is reported annually in their reports. The other thing that has changed since 2011 is that we have an investigation unit within the department that assists both our safety and our environment people, when they get to the stage of a major breach, to ensure that our investigations are robust and will actually stand up through court processes. That is a well-received and successful group.

**Hon STEPHEN DAWSON:** In terms of those instances of noncompliance, are they shared with other agencies at that time or do agencies have to wait for the AERs to become published?

**Dr Gorey:** No, we share it with our other agencies, and that is both information and intelligence gathering and also to ensure that those other agencies are coordinating their responses, so their response enforcement action is obviously informed by us.

**The CHAIRMAN:** How effective it is the enforcement action that DMP takes in terms of rectifying noncompliance?

**Dr Gorey:** I have been a regulator in a few different jurisdictions in a few different environmental agencies. As an aside, this morning I was meeting with representatives from the South Australian government who have come across to find out about our enforcement system. I was recounting to them that I cannot think of an example since I have been with the department, which is nearly four years or five years, where we have had to take enforcement action twice against a site.

**The CHAIRMAN:** Is there always follow-up action when a noncompliance issue is identified with an operator?

**Dr Gorey:** It certainly is, yes.

**Mr Sellers:** I might add that I have got reasonable experience across a few jurisdictions as well, having done similar roles in the Northern Territory and worked internationally. What is pleasing—Phil touched on it—is that not only South Australia but most near neighbours who are coming. For example, the work that Ian tabled. As soon as this document was made public, it was actually accepted as the document for use in some of the sister states in Australia and some of our near jurisdictions. So most people are recognising that we are somewhere near the leading edge and that what we are doing is working, and they are picking up our policy sheets and our documents and implementing them as their own regulation and coming to learn from us and how we are actually enforcing that. We are not saying we are perfect; it is always a learning curve, but it is pleasing that we are ahead of the curve for Australia and still working on it.

**The CHAIRMAN:** And the document you are referring there is “Guidelines for Preparing Mine Closure Plans”, June 2011.

**Mr Sellers:** Thank you. I should have read that out.

**The CHAIRMAN:** You might want to address this question just with reference to papers that you have already tabled, but I will just state explicitly for the record, what has the department done to address the Auditor General’s findings of poor monitoring and enforcement and unreliable record keeping?

---

[11.30 am]

**Mr Sellers:** By reference to the papers, my colleague Ian read out the letter from the State Archivist and the executive director of the State Records Office, saying that they have checked our ensuring compliance with conditions on mining and it commends us for implementing suitable improvements. So we have actually made improvements and met the standard that the state expects on that. For the Auditor General's report, while there were some disagreements in terms of how was written, in our move from prescription to risk base, we accepted the recommendations. I have been working on them since that time. I think the key factor was making them one of the documents in our work today. It is one of the documents that that ministerial advisory panel, chaired by Cheryl Edwardes, worked on in putting together its report "Reforming Environmental Regulation in the WA Resources Industry" and weaved it into the way that we now do our business. So record keeping and the fundamentals of the structure were updated. We took on board the criticisms and changed our processes, and the recommendations that came out of that group were accepted by the then Minister Moore and are now our policy for implementing. The final document I will just refer to is that we are working through the recommendations of the report and making them publicly available and to the implementation committee, which is this document. All the papers that are presented to the committee are also made available on our website, so interested parties outside can see how we are progressing against the key issues that came from that process.

**Hon STEPHEN DAWSON:** Mr Gorey mentioned thresholds for each of the major, moderate and minor noncompliance conditions. I am wondering, Mr Sellers, if you could also, by way of supplementary, provide the committee with a copy of what those thresholds are.

**Mr Sellers:** Yes, thank you. Just for clarity, Mr Gorey mentioned two things, one a statement on the thresholds and also our prosecution policy. I think both of those, if it suits, we will table together.

**Hon PAUL BROWN:** You were saying in your previous answer in regard to your record-keeping plan that you have, since the Auditor General's report, updated your regulatory plan with the State Archivist and the executive to meet the Auditor General's standards, or were they already being met prior to that and it was just a bit?

**Mr Sellers:** Thank you. We would state that they were certainly working and, as the Auditor General commented in the report, there was not anything happening that we were not aware of and dealing with, but it was certainly a recommendation we took seriously and we had the State Archivist come in and audit the process we were doing and give us a clean bill of health. Yes, it was working. Everything can be improved. We asked some people to come in and work with us and have since made some improvements.

**The CHAIRMAN:** Just a few further questions on the annual environmental reporting, or AER. Again, you have touched, sometimes in a lot of detail, on some of this, so I apologise for any doubling up. Having regard to the Auditor General's findings, which, as I indicated earlier, was our reference point, there are a couple of specifics there. For example, the Auditor General found that only 55 per cent of mining companies complied with the requirement to submit an AER and that if they were late or failed, DMP was not taking any action. Could you indicate what action, in summary, you have taken to address that finding?

**Dr Gorey:** Certainly. I think there are a couple of things that I ought to talk about. At the time that the Auditor General was undertaking his report and his audit, annual environmental reports were submitted in hard copy to the department and the Auditor General was referring to the receipt of those hard copies and the document tracking system that was in place at that time for those hard copies. We now have a system in which all annual environmental reports must be provided online, and so our online tracking system is actually the new system that Richard Sellers was referring to about document management. So we now have a completely different way of receiving annual environmental reports. The scope of annual environmental reports has also changed over that time, where the reports were tending to be quite long, verbose, and including information that was

unnecessary, which, we recognise, was also a costly impact on our regulating community. The new system, because it is an interactive online system, requires input into certain sections. Instead of just downloading a PDF, it is actually specific questions and specific information that a company is deemed to provide. The good thing about that is that it is a lot quicker for the regulator to go through and check. It is a lot quicker for the operators to go through and load in. One of the new sections as well is that for each tenement condition the operator needs to specify particularly whether they have complied with that tenement condition or not. When they lodge that through and hit the button, because it is all online we can now track whether people have started it; we can track whether they have completed it; we can track whether they have approved it, which are all different steps in the process, and we can communicate with them electronically. When they have submitted it, our screening process is very quick because all we really need to do is to check that they have put in legible information, and it then goes straight on to the website. To do that, and to enable that system, required changes to the Mining Act regulations, which were able to be put through between the time of the Auditor General's report and now, so we now have that available. We had a legislative constraint at the time, which is now fixed. In summary, the key points of what the department has done is that it has made the submission to the government to change the regulations to allow the information to become publicly available; implemented a completely new system for receipt and tracking of annual environmental reports; and has put a screening process in place to actually check those.

**The CHAIRMAN:** So there are some big changes there since 2011. How does the department review the AER, apart from checking that the boxes have been ticked and putting them up for public scrutiny by those that are inclined? What do you actually do?

**Dr Gorey:** A couple of quick things. The screening includes whether there is identified noncompliance that we were not otherwise aware of. If they have said in their submission that they are not complying with this condition, and we were not previously aware of that, that would trigger some action from our part; we would follow that through.

**The CHAIRMAN:** So they sort of highlight some sort of noncompliance in their AER, which presumably you should have been aware of, either through your own investigatory program or through them telling you about it some time during the course of the year when the incident occurred.

**Mr Sellers:** As they are obligated to do.

**Dr Gorey:** So we do that check there.

**The CHAIRMAN:** How soon do you do that after they are received.

**Dr Gorey:** There is a time frame which is about 30 business days, because it is a reasonably quick check. It does not stop the information going on the website.

**The CHAIRMAN:** Do AERs have to come in at the same date; like 30 June, or do they just come in at an anniversary of something.

**Mr Sellers:** At the anniversary of when the mine was approved.

**The CHAIRMAN:** So you have a steady trickle throughout the year rather than just one rush. Finally, before I hand over to other members who indicated they have questions, are mining proposals and mine closure plans publicly available?

**Dr Gorey:** Yes, we do put approved mining proposals on our website and mine closure plans that accompany mine proposals go on the website as well.

**Mr Sellers:** The AERs get that scrutiny; they get looked at. We also have a risk-based approach for all the sites around Western Australia. Just because you put in an annual environmental report that says it is clean does not mean that you are not already ringing alarm bells, that this is a high-risk site that we put a higher level of scrutiny on.

---

[11.40 am]

Phil's team has a list of characteristics that identify high-risk site; for instance, if there is acid-forming material in the overburden or the ore that is being moved, or if it nest to a wetland that is of significance, or it is near some high-level endangered flora. All those risks are weighed, and that risk-based approach means that there is a combination of what you read in the annual environmental report that determines the field work that the compliance team will do in any year.

**The CHAIRMAN:** As you have mentioned, is there laid down criterion, or even a standard for classifying a mine as high, medium or low risk?

**Dr Gorey:** As a department, we have a risk-based approach for doing it. The reason we are classifying sites in this way is to inform our inspection and compliance monitoring. That is really the reason we are doing it. We are very conscious about the perceptions, externally, of classifying some sites as high risk and some as not high risk, because we know that the risk classification, for the purpose we want, will change potentially from year to year. Our risk classification includes thing like the location of the receiving environment that that site might impact on, the type of activity and the stage of the development of that activity. In some stages of construction the risks of adverse environmental impact are higher than, say, some later stage, and the behaviour of the company or the track record of the company. All those things might change from year to year. So a site which we might consider one year as being high risk for the purpose of our inspection and compliance program may not be a high risk in later years.

**Mr Sellers:** This is all part of a toolkit to maintain compliance. While we have not mentioned it yet, we have just implemented a mine rehabilitation fund to replace environmental bonds. The reason I mention it now is that if you are a site that has had several instances or you are somehow a high-risk site environmentally, then even if you are in the mine rehabilitation fund, we have the ability to fully bond that site as well. So as well as the normal take someone to court, work through a process, if you are a high-risk site, we can reduce the risk to the community to zero by holding a 100 per cent bond for that site, given that one of the factors might be very poor behaviour of the operator of that site in the past or consistent environmental or other issues on site. So there is a tier system here that we can implement.

**The CHAIRMAN:** I am aware of the time, but I do not want to restrict things, so if there are any further questions on those matters.

**Hon PAUL BROWN:** Just going back to the Chair's question about the previous rate of 55 per cent in regard to the Auditor General's report, I just want to give you an opportunity to clarify it. You are saying that since you have gone to an active, live compliance measure, because of the way the system works you really do not have an issue with noncompliance, because it is active all the time. Is that what you are suggesting?

**Mr Sellers:** It has the ability for it to be checked within the 30-day period. It has those other factors—the risks and things and risk-based approaches around it—so the opportunity for someone to be doing something at a site and us to be unaware of it, the risk has been minimised. I could not put a percentage on it but it is very low. We all live in a resource state. We are all concerned. At a barbecue people talk about safety and they will talk about environment. What we also find is that if there is someone who is trying to do something that is untoward that we have not found out, and it might be a minor thing, quite often they are reported to us through a third party. All these things work together to keep that risk as low as possible. Yes, we are confident that the factors we put in place address the Auditor General's concerns.

**Hon STEPHEN DAWSON:** Is it the same staff at the agency who, I guess, assist proponents to get environmental approval as also look after the AERs and the monitoring of compliance projects to make sure that people are meeting them?

---

**Dr Gorey:** Certainly all of our officers provide assistance and advice to clients about the regulatory system and how the regulatory system works and what they need to do to put in a successful application. All of our staff have that role. Looking more at the sort of facilitation role, they are not the actual assessing officers. As a department, through the lead agency framework of government, we might actually assign a facilitator as a contact, effectively, for an operator. We do that in a very small number of cases. They do not tend to be the assessing officers; they tend to be either senior people or different people.

**Mr Sellers:** To be very specific, there are teams in Phil's environmental group that focus around compliance.

**The CHAIRMAN:** We have to keep moving. We have discussed information management a lot this morning. I think you have addressed the Auditor General's questions about inspection data, saying that inspection data is not adequately reported or used to monitor compliance with environmental conditions; compliance information is poor and unreliable; no analysis of inspection data; not clear that environmental conditions are achieving the intended outcomes. That is on page 28 of the report. Under risk management, are you now keeping thorough records of what sites are inspected, how frequently, by whom and when?

**Dr Gorey:** Yes, it is different to the times that the audit was being undertaken. We now have a different system for recording our risk assessment for sites, our inspections of sites and the outcomes of those inspections of sites.

**The CHAIRMAN:** You have got a new IT system, I understand, called environment assessment and regulatory system, or EARS. Has that been expanded to include post-approval compliance monitoring.

**Dr Gorey:** There has been a couple of major changes to EARS. We are now actually rolling out what we call EARS 2, because we are not terribly imaginative with our names, which is expanding and building the risk-based system to both the assessment and to the compliance. We have a post-assessment compliance monitoring program where the framework has been substantially built, and the next stage of the rollout of that, I understand, is later this calendar year. We have already rolled out the first couple of stages of it, including the compliance stage, which we talked about in the AERs, which requires all components to lodge that. As a department, we have actually rolled out the complete module as a pilot in one of our operational areas, which is being trialled now, which will mean that the final stages for us will have a working system.

**The CHAIRMAN:** Does the department analyse and assess the effectiveness of environmental conditions?

**Dr Gorey:** We do. It is a challenging scope to look at. This recommendation specifically was considered by the ministerial advisory panel as it was reported in "Reforming Environmental Regulation in the WA Resources Industry", December 2012 document. The specific action to deliver that is to review all conditions on tenements, which is the way environmental conditions are regulated for the mining industry, to specifically go through it and review all conditions, to ensure that they are actually delivering the expected environmental outcome. There is now a process which has been adopted there, which is more tangible I think, and also the progress has been reported in the status report of July 2013.

[11.50 am]

**The CHAIRMAN:** The Auditor General also made a finding in these terms on page 31, and I quote—

... non-compliance with environmental requirements will not be identified or addressed on all 26 State Agreement mines because DSD and DMP have ... differing views of their roles.

---

Have you had a review; and, if so, completed it between the departments, and what was the outcome?

**Dr Gorey:** A joint working group was established between the Department of Mines and Petroleum and the Department of State Development to look specifically into this issue. That review was undertaken and completed, as I recall, approximately mid last year. The review broadly identified a couple of matters. Many state agreements are written at a particular point in history and, therefore, can be slightly different. The assumptions that some people made about the regulation of state agreement acts was leading to confusion, and each state agreement act effectively needs to be considered specifically. That was one of the actions. There are some opportunities for improved efficiency, and the regulatory system that we have at the moment in government is adequate to regulate the industry. The regulatory system itself is adequate. The outcome, which is broadly the outcome of the review, is very clearly that the Department of Mines and Petroleum, and specifically the environmental area of the department, is responsible and accountable for administering the obligations of the Mining Act, and other agencies have the same obligations for their own responsible legislation. The thing that DMP, and DSD, the Department of State Development, is probably as interested in and has been working on is the opportunities we have to improve the efficiency of the system. That is to improve the efficiency of reporting, to improve the efficiency of assessments and information exchange between the departments, and while that was not necessarily the recommendation of the Auditor General, that is actually where a lot of the effort is now happening between the two departments.

**Mr Sellers:** It might be worth noting that recent state agreements have been written in such a way that the issues that have been negotiated with executive government are dealt with and then everything else is covered under the relevant legislation of the day. The most recent one, which was with Buru Energy in the north, puts everything to do with the environmental regulation back within our act, so there is no confusion. It is only in some of the older ones where we have had to work to make sure that there is no confusion existing between ourselves and DSD. Phil and his team regularly meet to make sure that is the case.

**The CHAIRMAN:** Thanks for that. The final area we wanted to look at this morning relates not to the current future plans but to the historical mine sites that we have got. I understand there are about 11 000 historical abandoned mines around the state. I just want to ask a couple of questions about how we might deal with those. Firstly, is there an inventory of sites?

**Mr Sellers:** There has been a lot of work done to get an inventory together just on those 11 000 sites. Just to characterise them, they are more like costeans, old shafts, small pits that were dug pre serious engagement with the current or most recent legislation. It does not include, for example, large industrial mines that are adjacent to new mining activity on a mineral lease, because they will be covered by the owner of the current mineral lease. In this week's paper, example, there was a discussion around an old iron ore mine, where a junior was trying to take over and, in fact, liability rests with BHP, who own that area, the mineral lease, which includes that historic pit. Very few of these 11 000 sites are of any large size. The ones that have a human issue or an immediate environment issue have been dealt with in small ways by us already but with limited resource. The way forward was part of the negotiation that we entered into and reached an agreement with industry on to set up the mine rehabilitation fund. It is the ability for the interest that is generated on that fund, after consideration by an advisory panel, to be used to address issues around those legacy sites as they occur in the future. With the commencement of that fund on 1 July this year, and compulsory from 1 July next year, that amount in the fund will rapidly build up over the next seven to 10 years to reach somewhere between \$500 million and \$700 million, which is roughly the environmental risk at the peak of the worst sort of mine we might have here if it had no rehabilitation continually done on it. The interest that is generated in that can be used to ameliorate some of these legacy sites. Where we have been doing some amelioration to date is typically where urbanisation is starting to meet some of these entities. Very recently, Phil and his team have been

working with the Collie shire and the mines down adjacent to Collie on an old pit called Black Diamond, which is very close to the townsite and fell into this abandoned category and needs some rehabilitation. We are working, within limited means, to address any that are an issue at the moment. But the mine rehabilitation fund, when it is up and got some reasonable money in it and generating interest, will create, at no cost to the government or the community, a fund so that we can address those issues into the future.

**The CHAIRMAN:** Is there any information available publicly about the inventory of abandoned sites or what their condition is?

**Dr Gorey:** The complete data on abandoned mine sites map is actually able to be downloaded from our website.

**Hon SAMANTHA ROWE:** I just wanted to clarify. That is a running inventory?

**Dr Gorey:** Yes.

**The CHAIRMAN:** Are there any further questions?

**Hon BRIAN ELLIS:** Just a quick one on that. What do you class as mines? Does that cover bores as well?

**Mr Sellers:** Not so much bores but, say, costeans, where prospectors might have got a back hoe and dug a trench. Areas of previous poor exploration activity that have left large areas cleared would certainly come into the site. But, no, not water bores or other things that were done under different legislation. If it is on part of a disturbed area around the mine site, then it could, but not typically.

**Hon BRIAN ELLIS:** I just asked the question in relation to—as you know, we have an inquiry coming up on fracking—whether that would cover the re-establishment of those sites when they leave.

**Mr Sellers:** For any of the active sites, in other words, a mineral site or petroleum site, part of the planning of the mine rehabilitation, the mine closure, the planning for drilling, for operating, for closing a gas or oil facility, it is all part of the pre-upfront approval and would be part of the mine rehabilitation fund if it is mineral and the bond system if it is petroleum. For any drilling activity for gas or oil, which is including fracking at the moment, the closure, the monitoring, is part of the approvals process of that and would be covered under it.

**The CHAIRMAN:** Any further questions? I think I might draw our hearing to a close now and thank you very much for your assistance. Transcripts will be provided shortly, as you are familiar with. As my colleague indicated, we do have a further inquiry going and that, as he said, wades into the legacy of mining issues as well as future environmental conditions, and that relates to hydraulic fracking. Again, the committee will be looking forward to continuing its liaison with your department to obtain advice and other information. For now, we had better wish you a good day and thank you very much for attending.

**Hearing concluded at 11.59 am**

---