



Report 11: 2022-23 | 20 December 2022

**PERFORMANCE AUDIT**

# Compliance with Mining Environmental Conditions



## Office of the Auditor General Western Australia

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ISSN: 2200-1913 (print)  
ISSN: 2200-1921 (online)

***The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.***

## WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

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### **Compliance with Mining Environmental Conditions**

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Report 11: 2022-23  
20 December 2022

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**THE PRESIDENT  
LEGISLATIVE COUNCIL**

**THE SPEAKER  
LEGISLATIVE ASSEMBLY**

### **COMPLIANCE WITH MINING ENVIRONMENTAL CONDITIONS**

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed if the Department of Mines, Industry Regulation and Safety and the Department of Water and Environmental Regulation effectively ensure mining projects comply with environmental conditions.

I wish to acknowledge the entities' staff for their cooperation with this audit.

A handwritten signature in black ink, appearing to be 'C Spencer'.

CAROLINE SPENCER  
AUDITOR GENERAL  
20 December 2022

# Contents

Auditor General's overview.....	5
Executive summary .....	6
Introduction .....	6
Background .....	6
Conclusion .....	8
Key findings .....	9
Recommendations.....	11
Response from the Department of Mines, Industry Regulation and Safety .....	13
Response from the Department of Water and Environmental Regulation .....	14
Audit focus and scope .....	15
Findings .....	16
Understanding of operator compliance with environmental conditions has narrowed ..	16
Current enforcement actions are unlikely to deter operators from breaching conditions .....	22
Appendix 1: Wittenoom asbestos contamination .....	27
Appendix 2: Entity functions and structures.....	28
Appendix 3: Entity responses to audit recommendations .....	29



## Auditor General's overview

Western Australia (WA) is fortunate to be a State with considerable natural resources. The mining sector is an important economic contributor and in 2021-22 generated over \$11 billion of revenue for the State<sup>1</sup>, as well as Commonwealth royalties and taxes. The revenue the State receives from the sector facilitates investment in a wide range of government activities including key priority areas such as health and education. Indeed, through the sector's economic contribution and provision of essential energy and elements of production, it underpins our current standard of living.



However, the extraction of resources brings with it significant environmental risks that the community expects the State's regulators to balance against the need for ongoing economic and community development. WA has previously experienced considerable environmental impacts from poor mining practices and failings in the State's regulation of environmental compliance, such as the 2006 lead pollution in the Port of Esperance. While special purpose accounts such as the Mining Rehabilitation Fund can assist the State to remedy issues in abandoned sites,<sup>2</sup> past disasters in our State and overseas show good regulation is critically important to preventing damaging and expensive incidents. This is particularly true in an operating context where many sites are in remote areas and out of sight, and therefore potentially out of mind.

As regulators, the Department of Mines, Industry Regulation and Safety and the Department of Water and Environmental Regulation have a critical role in ensuring mining operators comply with conditions designed to minimise environmental impacts. However, I am concerned our environment is not currently adequately protected, as our regulators do not have an effective understanding of how well operators follow their conditions.

Despite growth in the mining sector, the entities have reduced their scheduled monitoring activities. Planned inspection programs have shrunk by 60% or more over the last five years and neither has completed these programs since 2018-19. We found DWER's inspection program in 2021-22 did not reflect the distribution of mining operations across WA.

Both entities also need to improve their responses to non-compliance, including more timely enforcement actions (see Figure 7), to better deal with and deter future breaches. Further, neither entity is doing enough to leverage and further encourage operators' desire to maintain their social licence.

Like much of the public service the entities are managing high workloads, with ongoing staff attraction and retention pressures. This environment presents a heightened risk for these regulators, particularly from operators who may seek to take advantage of periods of reduced oversight. To deal with this, entities need to work together, innovate and take a balanced, risk-based approach to all their regulatory functions.

Both entities have also shifted resources and focus to deal with a backlog of approvals. While such agility is important, and is sustainable for a time, it is important that entities resume a balanced regulatory approach in the long term. I would like to acknowledge that compliance work never stopped completely despite the challenges of the COVID-19 operating environment conditions, and both entities told us they are keen to restore their compliance programs and are actively seeking staff to fill vacant roles.

We have made recommendations to assist both entities to maintain a credible compliance presence and help them make the most of their resources, information and technology. I am encouraged by their responses to the recommendations which reflect the passion and experience of the people who work in this important regulatory space.

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<sup>1</sup> While financial aspects were not considered within the scope of this audit, it is worth noting that collection and administration of mining royalties moved from the Department of Mines, Industry Regulation and Safety to RevenueWA in 2021.

<sup>2</sup> The Mining Rehabilitation Fund contained \$253.8 million at 30 June 2022.

# Executive summary

## Introduction

This audit assessed if the Department of Mines, Industry Regulation and Safety (DMIRS) and the Department of Water and Environmental Regulation (DWER) effectively ensure mining projects comply with environmental conditions. We audited the entities' compliance and enforcement approaches, focussing on activities from 2017 to 2022.

In this report we use the term mining to refer to the exploration and extraction of minerals and petroleum (including gas) and associated activities and facilities (such as tailings dams).

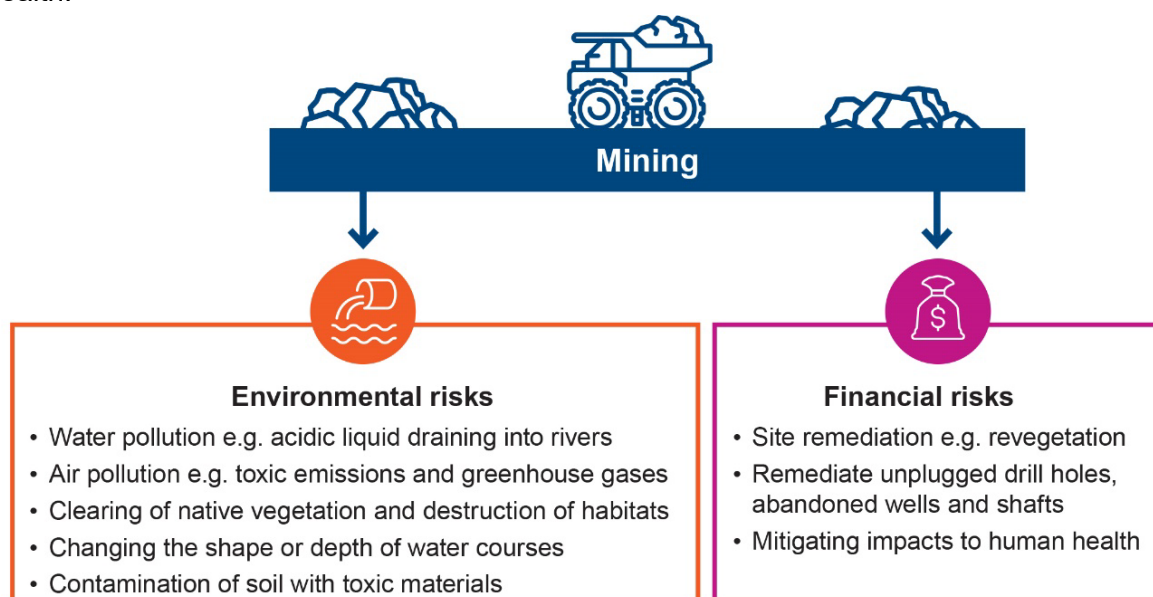
In a 2011 audit, we found the then Department of Mines and Petroleum (now part of DMIRS) had an ineffective approach to compliance and enforcement, taking minimum compliance action and not having clear criteria to determine the severity of breaches. We also found the then Department of Environment and Conservation (now part of DWER) did not complete its inspection program.<sup>3</sup>

In our 2014 follow-up audit, we found the Department of Mines and Petroleum had improved its compliance processes and the establishment of the Mining Rehabilitation Fund helped mitigate the State's liability for remediation costs.<sup>4</sup>

## Background

Over the past five years the number of mining projects in Western Australia (WA) has increased by around 12.5% to over 1,100 mine sites and around 260 petroleum titles. In July 2021, the State Government announced a fast-track approval process, including for mining.

Extraction of natural resources creates environmental and financial risks for the State (Figure 1). Mining processes can harm our waterways, landscapes, flora and fauna, and air quality, and pose risks to human health. Financial risks are realised when the State Government has to remediate abandoned sites and environmental damage, or mitigate the impacts to human health.



Source: OAG

**Figure 1: Examples of environmental and financial risks**

<sup>3</sup> Office of the Auditor General, [Ensuring Compliance with Conditions on Mining](#), OAG, Perth, 2011.

<sup>4</sup> Office of the Auditor General, [Ensuring Compliance with Conditions on Mining – Follow up](#), OAG, Perth, 2014.



WA is not immune to the adverse consequences of mining. Asbestos contamination near Wittenoom in the Pilbara provides a historical case study. Mining in the area led to hundreds of worker and civilian deaths from asbestos exposure. Wittenoom is now the largest contaminated site in the southern hemisphere and continues to pose a significant liability for the State (Appendix 1).

To minimise the risks, DMIRS and DWER's project approvals include environmental conditions such as:

- preventing or controlling the amount and type of pollution (for instance, toxic and greenhouse gas emissions or heavy metals leaching into groundwater)
- rehabilitating and decontaminating land so it can be used for other activities (for example, by removing contaminated soil and planting native vegetation)
- monitoring and reporting requirements (such as air and groundwater monitoring and annual environmental reporting).

As regulators, DMIRS and DWER must ensure operators follow the environmental conditions set in their project approvals:

- DMIRS, under the *Mining Act 1978* (Mining Act) and various petroleum legislation, monitors and enforces compliance with conditions in mining and petroleum approvals to prevent or reduce injury to land.<sup>5</sup> It also approves and monitors the clearing of native vegetation by mine operators under section 20 of the *Environmental Protection Act 1986* (EP Act).
- DWER, under legislation including the EP Act and *Rights in Water and Irrigation Act 1914*, monitors and enforces compliance with conditions which protect water resources and prevent and mitigate environmental harm from industrial activities and significant projects approved by the Minister for Environment (Ministerial Statements).<sup>6</sup>

Where a project is also approved under a State Agreement, the entities provide environmental monitoring advice to the Department of Jobs, Tourism, Science and Innovation who regulates the conditions set through these Acts.

DMIRS regulates over 1,000 operations and combines its approvals and compliance functions within the same team. DWER monitors over 300 mining projects with industry licences and more than 200 approved under Ministerial Statements, and has separate approval and compliance teams. DWER also regulates other industries such as waste. Appendix 2 outlines the entities' main compliance functions, the approval documents against which they monitor compliance and their main compliance monitoring activities.

Better practice regulation recommends a risk-based approach to compliance monitoring.<sup>7</sup> This involves identifying and developing compliance programs that target areas of higher risk and some lower risk projects. Programs should include site inspections, desktop assessments and educating stakeholders on compliance requirements to promote voluntary compliance.

Entities have a range of enforcement actions available to respond to environmental condition breaches. Enforcement actions that impose more severe penalties generally require a

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<sup>5</sup> [Mining Act 1978](#), Parliament of WA, Perth, 1978, sections 46A, 63AA, 70I and 84.

<sup>6</sup> [Environmental Protection Act 1986](#), Parliament of WA, Perth, 1986; [Rights in Water and Irrigation Act 1914](#), Parliament of WA, Perth, 1914.

<sup>7</sup> For example: Department of Finance, Services and Innovation, [Guidance for regulators to implement outcomes and risk-based regulation](#), Department of Finance, Services and Innovation, Sydney, 2016; Australian National Audit Office, [Administering Regulation](#), ANAO, Canberra, 2021.

ministerial or court decision. Both entities' regulatory publications state the importance of responding to breaches and deterring non-compliance transparently and consistently.

Good regulators ensure learnings from compliance and enforcement activities inform other aspects of the regulatory cycle (Figure 2).



Source: OAG based on Australian National Audit Office Better Practice Guide – Administering Regulation

**Figure 2: Regulatory cycle**

## Conclusion

DMIRS and DWER are not fully effective in ensuring mining projects comply with conditions to limit environmental harm and financial risks to the State. Their monitoring and enforcement currently provide a narrow view of operator compliance and do little to deter operators from breaching conditions.

Neither entity is fully effective in monitoring operator compliance. Both develop yearly compliance programs that include planned activities and allow for responses to emerging issues. However, despite growth in the mining sector, the entities have reduced planned monitoring activities, shrinking planned inspection programs by 60% or more over the last five years. During this time, DMIRS did not complete its planned program once and DWER has not since 2018-19. Entities also rely heavily on operator self-reported information with minimal independent verification and records are not centrally managed. As a result, entities have a limited and siloed understanding of operator compliance and are less likely to identify potential environmental risks to constructively target their regulatory efforts.

In addition to monitoring activity reducing in recent years, enforcement timeliness is also lagging and entities do not demonstrate fully effective responses when they suspect non-compliance with environmental conditions. Enforcement actions can be ineffective and slow, in part because entities do not have thresholds to determine the most appropriate approach. Furthermore, neither entity publishes compliance outcomes, an approach used by similar regulators in other jurisdictions to socially pressure operators to voluntarily comply. If entities do not consistently and adequately enforce conditions, especially for high-risk operations,

operators may be less deterred from breaching them. This may result in damage to the environment and financial liabilities for the State.

We found dedicated staff at both entities working in challenging circumstances. The entities told us staffing shortages and challenges of the COVID-19 operating environment impacted their ability to carry out their compliance activities in recent years. Additionally, both have moved resources to mining approvals in support of a Government priority to speed up mining approvals and reduce application wait times. While such a diversion of effort may be necessary and possible for a short period, it is critical entities restore their compliance activities as part of delivering a balanced regulatory approach.

## Key findings

### Understanding of operator compliance with environmental conditions has narrowed

#### *Monitoring of operator compliance is not fully effective*

- Both entities plan a yearly compliance program to check operators follow their environmental conditions.
- Although the mining sector has grown, both entities plan fewer compliance activities, including significantly less site inspections. Neither entity has consistently completed these smaller programs.
- Entities require their compliance programs to be risk-based and there is evidence of more focus on higher-risk operations, but neither has documented how their compliance activities address the environmental and related financial risks of the sector.

#### *Compliance information is inadequately verified and is incomplete*

- Neither entity has a sufficiently independent view of operator compliance. Information used to assess compliance is self-reported by operators, but entities do not adequately verify it. The substantial reduction in the number of proactive inspections means entities have less opportunity to confirm and verify operators' self-reported information.
- Compliance records are spread across multiple systems, and some are incomplete.
- Information can be better shared between entities.

#### *Probity processes for staff are mostly in place*

- Conflict of interest and gift declaration processes are adequate, although DWER does not regularly communicate probity risks to staff. Entities do not have processes for rotating staff across mining projects to reduce the risk that staff become overly familiar and, as a consequence, less objective in their regulatory assessments.

### Current enforcement actions are unlikely to deter operators from breaching conditions

#### *Entities do not have a comprehensive approach to enforcement*

- Internal guidance does not contain clear thresholds to support consistent and appropriate enforcement actions. Some areas have no enforcement guidance at all.
- Entities do not have a clear approach to address ineffective conditions or how to feed learnings into approval processes.

#### *Entities are slow to take enforcement action*

- Entities do not issue and follow-up on enforcement actions in a timely manner. Neither met their internal targets in 2021-22 and some serious breaches have remained unaddressed for several years.

#### *Lack of published compliance information reduces social pressure*

- Neither entity publishes detailed compliance information or formal warnings issued to operators. Additionally, DMIRS does not make it easy for the public to find the operators it has penalised.

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## Recommendations

DMIRS and DWER should:

1. fully document the risk-based approach that underpins their compliance activities to address sector risks, including how they select sites for their compliance programs and complete risk assessments when changing the activities or sites in the program

**DMIRS implementation timeframe:** Quarter 1, 2023

**DWER implementation timeframe:** December 2023

**Entity responses:** Refer to Appendix 3

2. improve their compliance assessment processes to ensure appropriate, risk based verification of operator self-reported information through independent sources such as publicly available technology (e.g. ground monitoring and aerial imagery) and regional partners (e.g. Traditional Owners and/or regional staff from other State and local government entities)

**DMIRS implementation timeframe:** Complete review by mid-2023

**DWER implementation timeframe:** December 2023

**Entity responses:** Refer to Appendix 3

3. improve internal and inter-entity use of compliance and enforcement information to promote efficient access and informed regulation, for instance by:
  - a. collaborating on reporting requirements, resources and training
  - b. incorporating information-sharing mechanisms when developing digital platforms

**DMIRS implementation timeframe:** Quarter 2, 2023

**DWER implementation timeframe:**

- MOU by July 2023
- On-going improvements to Environment Online to December 2024
- Reduced reporting project by end 2023-24

**Entity responses:** Refer to Appendix 3

4. strengthen their enforcement approaches to ensure effective action by including:
  - a. minimum indicative thresholds for action
  - b. guidance on how to resolve ineffective, unenforceable or unmonitorable conditions

**DMIRS implementation timeframe:** Quarter 1, 2023

**DWER implementation timeframe:** September 2023

**Entity responses:** Refer to Appendix 3

5. consider publicly releasing information on operator compliance and non-compliance to promote transparency and encourage compliance, and document this consideration

**DMIRS implementation timeframe:** Quarter 2, 2023



**DWER implementation timeframe:** June 2023

**Entity responses:** Refer to Appendix 3

6. prioritise plans to restore their compliance activities as part of delivering a balanced regulatory approach.

**DMIRS implementation timeframe:** Quarter 2, 2023

**DWER implementation timeframe:** On-going

**Entity responses:** Refer to Appendix 3

## Response from the Department of Mines, Industry Regulation and Safety

The Auditor General's report titled '*Compliance with mining environmental conditions*' presents an important opportunity for DMIRS to review its processes and systems to support the effective regulation of the resources industry. DMIRS accepts the Report's recommendations and looks forward to working within government to implement these recommendations.

The COVID-19 pandemic altered the way in which DMIRS was able to undertake compliance of the resource industry for a significant period of time covered by the audit. DMIRS was also impacted significantly by fluctuating staffing levels, resulting in a skills shortage during this time period, which is ongoing and impacting many sectors. Impacts of the pandemic and staff shortages required DMIRS to be flexible, agile and responsive in its approach to compliance activities, with some resources redirected from environmental compliance activities in order to provide continuity of service with respect to assessments of mining and petroleum projects. This approach was consistent with the whole of Government COVID-19 response and aligned with the Government's approval reform objectives and priorities.

Following the conclusion of DMIRS' COVID-19 response, implementation of its Approvals Response Plan, and multiple recruitment campaigns; DMIRS' standard regulatory protocols are now normalised and in effect, with resources redirected back to environmental compliance activities in order to reaffirm DMIRS' regulatory presence within Western Australia.

In recommencing its standard regulatory protocols and practices, DMIRS acknowledges there is scope to strengthen its compliance processes. In view of this, DMIRS envisages that it will undertake reforms in its compliance functionality and approach to non-compliances, and enforcement actions, over the coming years. It is envisioned these reforms will include, but not be limited to: bolstering resourcing so that it is proportionate to industry growth and risk; continuing to refine its ISO 9001:2015 accredited processes and procedures; enhancing its ability to validate information provided by proponents (as an example, adopting technology to assist with identifying and verifying potential non-compliance); enhancing systems to improve business intelligence and undergoing digital transformation to promote information sharing across agencies.

## Response from the Department of Water and Environmental Regulation

The department welcomes the Auditor General's report on Compliance with mining environmental conditions. The department acknowledges the findings and recommendations of the report and affirms its commitment to continually improve our regulatory capabilities including our compliance and enforcement framework, capability and processes.

The department understands that a robust compliance and enforcement framework that is consistently applied and proactively enforced is vital to the protection of our environment and water resources as well as informing environmental policy and regulatory assessments by closing the 'regulatory cycle'.

Our Reform Roadmap highlights the importance of our compliance and enforcement activities and the need for us to review, improve and integrate these activities across the department.

Through our reform agenda we are already seeking to evolve our regulatory framework to be best practice and place based, more risk-based and consistent, while looking for opportunities to employ all that technology has to offer.

The development and implementation of Environment Online and the department's digital transformation will deliver significant regulatory benefits by facilitating improved capture, interrogation, use and sharing of intelligence to support increased collaboration and inform compliance and enforcement activities.

We recognise that transparency underpins public confidence in our management of the environment and can play a significant role in deterring non-compliance. Our Transparency First Policy is currently in development and in conjunction with Environment Online will create a platform for greater transparency.

The department will continue to address the findings and recommendations in the report.

## Audit focus and scope

The objective of the audit was to assess whether State government entities effectively ensure mining projects comply with environmental conditions.

The criteria were:

- Do entities effectively monitor and promote operator compliance with environmental conditions?
- Do entities effectively act when environmental conditions are not met?

This audit assessed the compliance activities of the Department of Mines, Industry Regulation and Safety (DMIRS) and the Department of Water and Environmental Regulation (DWER). We did not audit the Department of Jobs, Tourism, Science and Innovation, which regulates State Agreements, as that may be the subject of a future audit.

What we examined:

- all types of environmental conditions within approvals administered by DMIRS and DWER
- compliance programs and approaches
- inspection and desktop assessment records
- records of enforcement actions
- interviews with staff and stakeholders.

We did not assess:

- regulation of resource project downstream activities (such as transport and refineries)
- environmental offsets, the Mining Rehabilitation Fund or mining revenue payments
- approvals and condition-setting processes beyond how the compliance program feeds back into these activities
- regulation of other activities or industries within the entities' remits, such as mine safety, waste processing or pollution incident response
- environmental compliance with State Agreements.

This was an independent performance audit, conducted under section 18 of the *Auditor General Act 2006*, in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements*. We complied with the independence and other ethical requirements related to assurance engagements. Performance audits focus primarily on the effective management and operations of entity programs and activities. The approximate cost of undertaking the audit and reporting was \$485,000.

# Findings

## Understanding of operator compliance with environmental conditions has narrowed





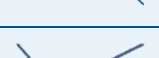

### Monitoring of operator compliance is not fully effective

#### *Fewer compliance activities are planned despite the sector growing*

Both entities plan a yearly compliance program to check operators follow their environmental conditions. These programs identify a sample of operators for review and can include activities that are both proactive (to check for non-compliance) and reactive (if entities believe an operator may be breaching its conditions). Information for a reactive activity is often sourced from complaints or referrals from other entities. Compliance program activities include:

- site inspections: officers travel to a mine site and examine operations
- desktop assessments: officers remotely review an operator's annual environmental report to determine compliance.

However, both entities have reduced the number of activities they plan, despite the number of mining projects increasing. Since 2017-18, there has been a 12.5% increase in the number of mines, but planned compliance activities have reduced by 3% (DMIRS) and 44% (DWER) and planned site inspections have dropped by 60% or more at both entities (Table 1). Compliance programs are an important way for entities to monitor compliance and identify emerging risks. The entities told us they reduced the number of planned activities in response to the COVID-19 operating environment and ongoing staff shortages. DMIRS increased its planned desktop assessments to partially mitigate its reduced site inspection program.

Compliance programs	2017-18	2018-19	2019-20	2020-21	2021-22	Change over five years
<b>DMIRS total planned activities</b>	<b>380</b>	<b>385</b>	<b>450</b>	<b>489</b>	<b>367</b>	 <b>↓ 3%</b>
Desktop assessments	241	266	417	431	311	 <b>↑ 29%</b>
Inspections	139	119	33	58	56	 <b>↓ 60%</b>
<b>DWER total planned activities</b>	<b>90</b>	<b>82</b>	<b>70</b>	<b>77</b>	<b>50</b>	 <b>↓ 44%</b>
Desktop assessments	42	33	36	38	42	 <b>0%</b>
Inspections	48	49	34	39	8	 <b>↓ 83%</b>

Source: OAG based on DMIRS and DWER data

**Table 1: Number of planned compliance activities<sup>8</sup>**

Planned programs were not consistently completed, despite having been reduced (Figure 3). Since 2017-18, DMIRS has not finished its planned programs, although in 2019-20 it

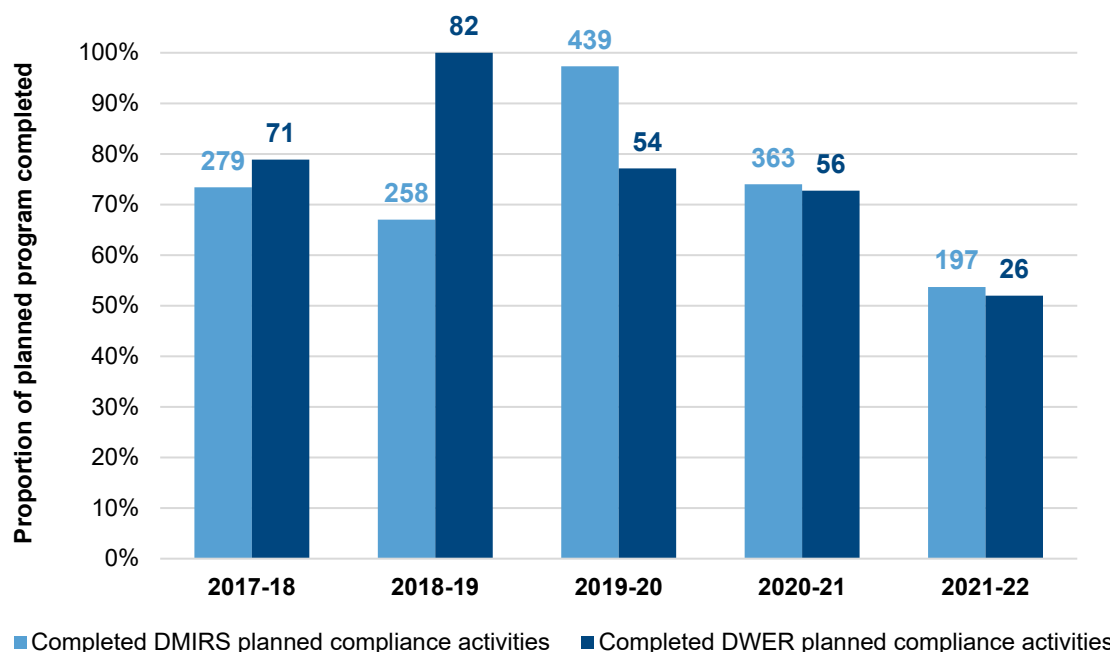
<sup>8</sup> This table presents environmental inspections only and does not include inspections of other industries or responsibilities within the entities' remits.



completed 97%. DWER has not completed its planned programs since 2018-19. Both entities completed roughly half their programs in 2021-22:

- DMIRS only completed 197 of its 367 planned activities – 31 of its 56 planned inspections and 166 of its 311 planned desktop assessments.
- DWER only completed 26 of its 50 planned activities – four of its eight planned inspections and 22 of its 42 planned desktop audits.

If entities do not complete their programs, they will have a limited awareness of the emerging issues they identified in planning and undue confidence in operators complying with their conditions.



Source: OAG based on DMIRS and DWER information

*Note: Numbers at top of bars denote the actual number of activities conducted. Data does not include reactive/additional activities carried out by both entities, or activities that other (non-environmental compliance) teams may have conducted, such as Mining Rehabilitation Fund audits or contaminated site inspections.*

**Figure 3: Completion of planned compliance activities**

As well as their planned programs, both entities conduct additional activities in response to emerging issues. DMIRS advised they included fewer activities in their planned programs to ensure they had capacity to respond to emerging issues. In 2021-22, it carried out 21 additional inspections and 35 desktop assessments. DWER's published compliance program recognises that planned activities may need to be amended to account for emerging priorities. However, DWER could not provide information on how many additional activities were carried out.

Both entities moved compliance staff to other regulatory functions to meet competing priorities, including the Government's fast-tracked mining approvals strategy, at a time when their compliance functions were already short staffed. In mid-2022, DMIRS focused its environmental regulation officers on assessing mining applications, leaving its newly created Compliance and Enforcement team understaffed. Similarly, DWER reassigned five of its 12 compliance officers to approvals.

Entities have acknowledged low staff numbers pose a risk to their compliance functions. They consider this shift as temporary and told us they are focussing remaining compliance

staff on highest risk operations. Case study 1 outlines a historical pollution incident where insufficient resources and a failure to adequately assess compliance reports were identified as contributing factors.

### Case study 1: Compliance monitoring and the Esperance lead disaster

In its 2007 inquiry into the Esperance lead disaster, the WA Parliament's Education and Health Committee identified 'major failings in DEC's [the Department of Environment and Conservation, now DWER] industry regulation function' and called for a boost to monitoring of projects 'likely to have a significant environmental impact'.<sup>9</sup>

The inquiry assessed how lead concentrate being transported to, and handled at, the Port of Esperance caused significant pollution in 2006. It found residents of Esperance had elevated lead levels in their bloodstreams and around 9,500 birds died.

The Committee pointed to DEC's inadequate review and follow-up of the operator's annual compliance reports as contributing to the ineffective compliance response. It also noted DEC's poor response to complaints and insufficient scrutiny of dust monitoring results as reasons why the matter went unresolved for so long.

It found DEC's slow and uncoordinated response was largely due to inadequate resourcing and constant restructuring in the department, which led to a loss of corporate knowledge and capability. The Environmental Protection Authority, Esperance Port Authority and the mining company were also found to have failed to meet their responsibilities.



Source: trabantos/Shutterstock

**Figure 4: The Port of Esperance**

### *Entities cannot always demonstrate compliance programs are risk-based*

Neither entity adequately captured how their planned compliance programs address risks across the sector. Both entities note risk areas they are targeting and rate sites by risk when initially approving their licences. However:

- DMIRS had documented high-level points to inform shortlisting, but it did not capture how this informed decision-making for the compliance program. It has an internal target to assess all extreme or very high-risk sites annually but has not tracked if it achieved this target. We note that half of the sites DMIRS assessed in 2021-22 were rated high to very high risk.
- DWER did not have a documented process for developing its program, nor did it capture why specific sites were selected for review.
- Both entities had not updated site risk ratings to reflect the outcomes of compliance activities.

<sup>9</sup> Education and Health Standing Committee, [Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area](#), Legislative Assembly of the Parliament of Western Australia, Perth, 2007.

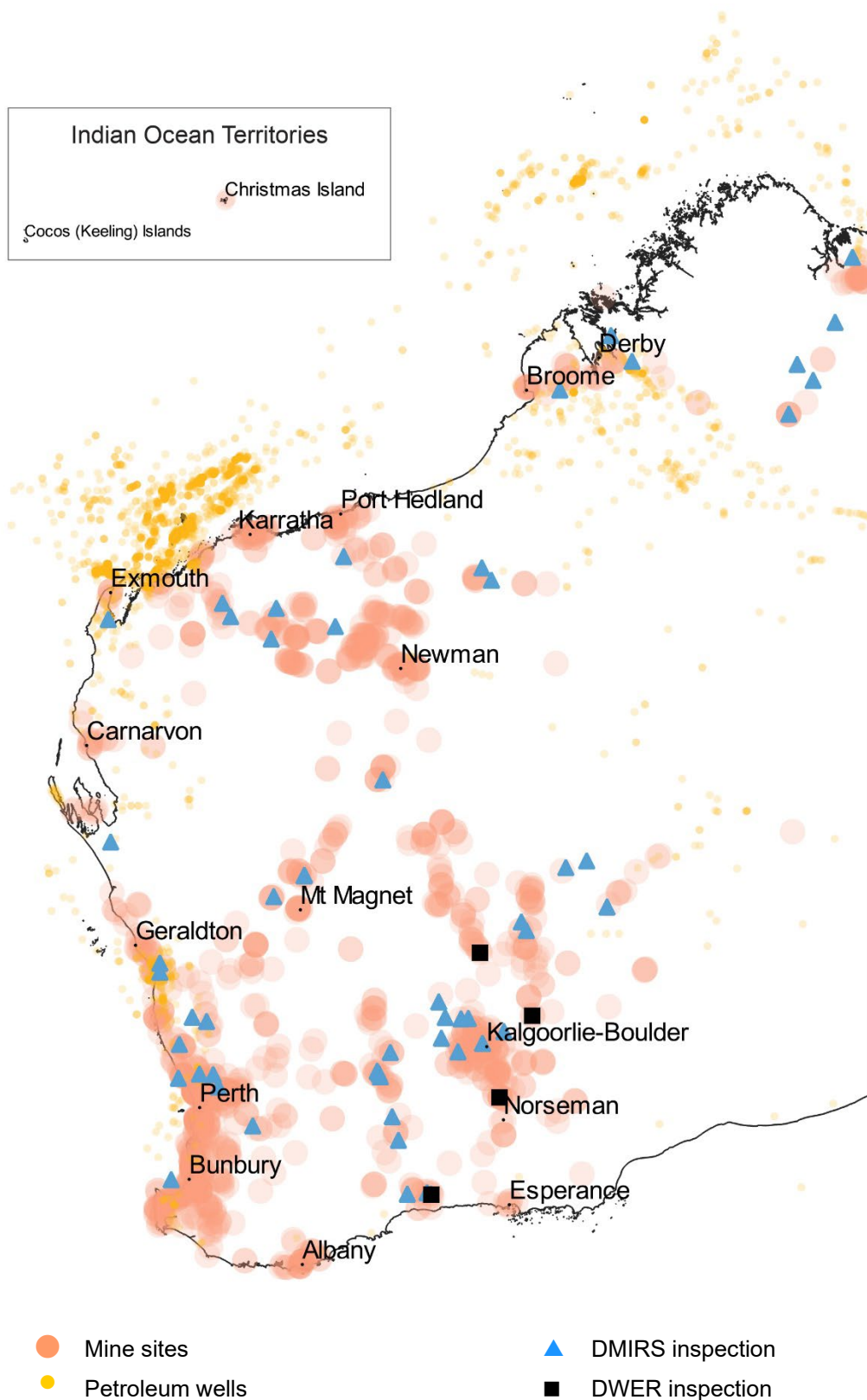
Further, when modifying their programs entities did not adequately capture how they will address environmental and compliance risks across the sector:

- DMIRS did not always document how it considered risk in removing sites from its planned program. In 2020-21, to address staff shortages, DMIRS cancelled primarily low and medium risk sites. However, in 2021-22 it cancelled 64 activities at sites rated high to extreme risk without capturing how these risks would be covered. While 56 reactive activities were completed, this only included eight high or very high-risk rated sites. None were rated extreme.
- DWER did not capture why particular inspections were cancelled or the overall impact on its compliance coverage. Its 2021-22 plan to inspect 21 resource projects was cut to eight to allow it to focus on public complaints about landfills in the South-West. However, it did not document why individual sites were removed from the program.

Compliance programs must remain flexible to respond to emerging issues. However, entities need to ensure a risk-based approach to modifying their programs if they are to effectively cover key regulatory risks and focus their efforts on the things that matter most. A deliberate risk focus is even more important at a time of heightened industry activity and staff shortages in regulatory entities. We note that some of DMIRS' compliance processes were independently audited in 2021 to maintain its Quality Management System's accreditation. DWER has told us that in 2022 it has started developing a risk-based tool for planning and prioritising compliance activities and has commenced an internal audit of its compliance and enforcement activities.

DWER's inspections did not reflect the distribution of mining projects across the State. While most mining projects are in the north of WA, in 2021-22 DWER only inspected sites in the south and the Goldfields (Figure 5). Its planned program included only one site inspection in the north and this was not conducted. This reduces DWER's regulatory presence in areas of higher activity and its awareness of non-compliance in the more remote portions of WA where most mining occurs.

Both entities' site inspection and desktop assessment records were generally comprehensive.



Source: OAG based on DMIRS and DWER data

**Figure 5: 2021-22 completed inspections and distribution of resource projects<sup>10</sup>**

<sup>10</sup> Does not include any additional inspections conducted by DWER such as Ministerial Statement compliance inspections, enforcement team investigations or pollution response team callouts, as DWER could not provide data for these.

## Compliance information is inadequately verified and is incomplete

### *Neither entity has a sufficiently independent view of operator compliance*

Entities rely on unverified, self-reported information. Both base their understanding of compliance on operator-provided reports with limited checking to determine the accuracy of reported information. Neither routinely requires adequate verification of reported data using independent information. For example:

- DMIRS requires some but not all branches to compare operator reports of ground disturbance to satellite imagery.
- DWER's Ministerial Statement compliance guidance provides examples of verification methods and we saw some being used in desktop assessments. However, the Water branch, which also relies mainly on desktop assessments, does not require regular verification, for example through independent water meters at mine sites to compare readings.
- Further, as both have reduced their proactive inspections, there is less opportunity to gather independent information to verify claims made by operators.

Operator self-reporting can provide efficiencies to government, however, to be effective, regulatory entities must maintain a sufficiently sceptical approach and verify claims on a risk-based sample.

Both entities promote accurate reporting and therefore maintain a broad compliance presence by publishing guidance to help operators understand their obligations. We found:

- DMIRS provides an example table for reporting mining compliance with environmental outcomes, guidelines for preparing a petroleum environmental report and further information in its online lodgement form.
- DWER provides detailed guidance for operators reporting water and Ministerial Statement compliance and limited guidance for annual industry reporting.

Further, entities promoted compliance during discussions with industry, educational emails and compliance advice provided during site inspections. Both staff and industry told us inspections are valuable because they provide opportunities to:

- discuss compliance challenges and gain a better understanding of projects
- build relationships and maintain a compliance presence in regional areas.

### *Compliance records are spread across multiple systems, and some are incomplete*

At both entities, important records of compliance activities contained gaps. For example, in DMIRS' mining enforcement spreadsheet, 70 of the almost 300 compliance issues resolved in the past five years did not have any associated documentation. At DWER we found missing risk ratings, blank incident outcomes, and three compliance issues with status discrepancies across different spreadsheets. If information is not complete and up-to-date, entities will not have sound records of compliance activities and decision-making will be based on incomplete knowledge. Furthermore, if enforcement action needs to be taken, sufficient evidence may not be available to inform decision-making and successful prosecution.

Compliance records are spread across multiple systems and compliance monitoring spreadsheets are not centralised. The entities track compliance issues in unconnected systems and spreadsheets, despite areas of overlap. Each branch within DWER tracks its own compliance program activities and each of the six water branches has a bespoke approach. This makes it difficult to monitor trends and efficiently deploy resources. Both hold



meetings to share key information between internal teams. And since our 2011 audit, DMIRS created systems to digitally monitor and centralise some of its processes and data and tracks its compliance activities in a central spreadsheet.

While DMIRS tracks and publishes information on abandoned mines, it has no similar program for abandoned petroleum facilities. This sector is growing and abandoned petroleum assets could pose substantial liabilities for the State.

### *Information could be better shared between entities*

Entities do not make the most of information-sharing agreements. An administrative agreement was signed in 2021, but is not supported by efficient electronic systems to collate data about significant projects. Information transfer relies on staff initiative and occurs mainly via emails and meetings. Without efficient electronic systems to share information, officers may not have ready access to information they need to assess compliance and identify environmental risks. We found both entities understand their regulatory responsibilities and areas of interaction and communicate on significant compliance issues.

Entities have taken steps to improve collaboration, but it is not yet clear how effective these will be. The Streamline WA Council of Regulators, including DMIRS and DWER, is developing a Memorandum of Understanding to share relevant compliance data and resources. However, the draft suggests a continued reliance on individual requests rather than a centralised approach to compliance information. Entities are independently progressing new digital platforms to improve their compliance capability which may provide opportunities to increase cross-entity access to information and integrate with other systems. But it is not yet clear if these will interface or share data. Other information sharing efforts include biannual Common Understanding Workshops, a Microsoft Teams channel for regulatory staff and an upcoming joint training field trip.

### **Probity processes for staff are mostly in place**

Both entities have an appropriate probity framework, including processes and guidance for staff to declare conflicts of interest and gift decisions. However, neither has formal processes to rotate staff on and off mining projects. Keeping staff on the same projects for long periods increases the risk that officers may not maintain sufficient independence. While DMIRS has regularly communicated probity risks to staff, DWER's reminders were less frequent. Regular reminders promote fair dealings with stakeholders and accountable decision-making.

Entities have competing and somewhat conflicting roles. DMIRS, as the State's mining approver has a responsibility to promote mining investment in WA, but is also the sector's watchdog. Similarly, DWER approves licences for polluting activities and use of water, as well as monitoring compliance with their conditions. If entities do not have controls in place to separate competing remits, they may lose credibility as regulators.

## **Current enforcement actions are unlikely to deter operators from breaching conditions**

### **Entities do not have a comprehensive approach to enforcement**

#### *Internal guidance does not support consistent and appropriate enforcement action*

Entities do not have effective processes to choose the most appropriate enforcement action to address a breach. Policies outline an escalating enforcement approach (in line with Figure 6) and highlight factors to consider, such as degree of environmental harm and if an operator is cooperating. However, neither has a comprehensive system to weigh such considerations. DMIRS' flowchart provides several key decision points (including whether a penalty is needed) but relies on subjective judgments. DWER's guidance does not contain indicative thresholds to aid decision-making. Effective responses require a case-by-case approach

supported by clear processes to determine the level of enforcement action required and ensure fair dealing with all operators.



Source: OAG based on better practice and DMIRS and DWER approaches

**Figure 6: Typical enforcement pyramid showing escalating response options**

DMIRS and DWER have some processes to support effective enforcement decision making. Actions are approved by senior staff, a panel or the Minister before being enacted. DMIRS has also developed a tool to consistently calculate the fines it issues. These controls are useful for specific purposes but do not provide a comprehensive framework for choosing an enforcement response.

Further, enforcement procedures do not adequately consider factors that may indicate the need for deterrence, such as an operator's culpability or widespread bad practice, or how to weigh their significance. As a result, entities may implement ineffective actions (Case study 2). Both entities' enforcement policies recognise the need for deterrence in maintaining credibility as regulators.

#### Case study 2: Lack of penalty and deterrence in enforcement actions

- DMIRS took no action on multiple breaches over 2021-22 by an established operator. Non-compliances included disturbing land outside of approved areas, improper construction of retaining walls, not burying hazardous material within 24 hours and not cleaning oil spills in a timely manner. DMIRS issued a letter of education to the operator for drilling under an expired approval and a warning for drilling in an unapproved area.
- DWER found an established operator had built a number of wastewater treatment plants over several years without approval. The operator noted that waiting for approval would have delayed operations. DWER issued a letter of warning and retrospectively approved the plants.

The absence of documented and approved enforcement procedures for some key regulatory responsibilities further limits the effectiveness of entities' enforcement responses. DMIRS does not have guidance for acting on petroleum non-compliance, despite this sector becoming an increasingly important part of its remit. DWER has not developed guidance for

issuing Environmental Protection Notices (directions), and its updated manuals for investigations and inspections had been in draft for almost a year at the time of audit. Decision-making is largely reliant on staff corporate knowledge and discussions.

*Ineffective conditions are not well-managed*

Neither entity has a comprehensive process to fix poorly written or conflicting conditions, limiting their ability to take effective enforcement action (Table 2). We found:

- Neither has a clear process to consistently determine if changes to the condition wording or another enforcement action would be more appropriate.
- DWER does not systematically feed compliance learnings into its environmental impact assessment processes. We were told that Ministerial Statement compliance officers previously discussed enforcement issues in meetings with EPA staff, but these meetings no longer occur.

Without clear processes, entities may not be able to mitigate risks, improve environmental outcomes or ensure breaches are efficiently addressed. Both entities’ compliance officers can, and do, recommend licence amendments to their approval branches. Recent legislated changes to combine conditions across multiple mining tenements into a single document may help prevent conflicting conditions across DMIRS’ approvals.

Example condition	Why condition is unenforceable or ineffective
Waste to be disposed of in a suitable manner	“Suitable manner” is a subjective term.
Works should not significantly increase production capacity	“Significantly” is a subjective term.
Maintain 3 meters between the surface being mined and the groundwater level	Does not require initial measurement of the groundwater level or installation of a bore for ongoing monitoring.

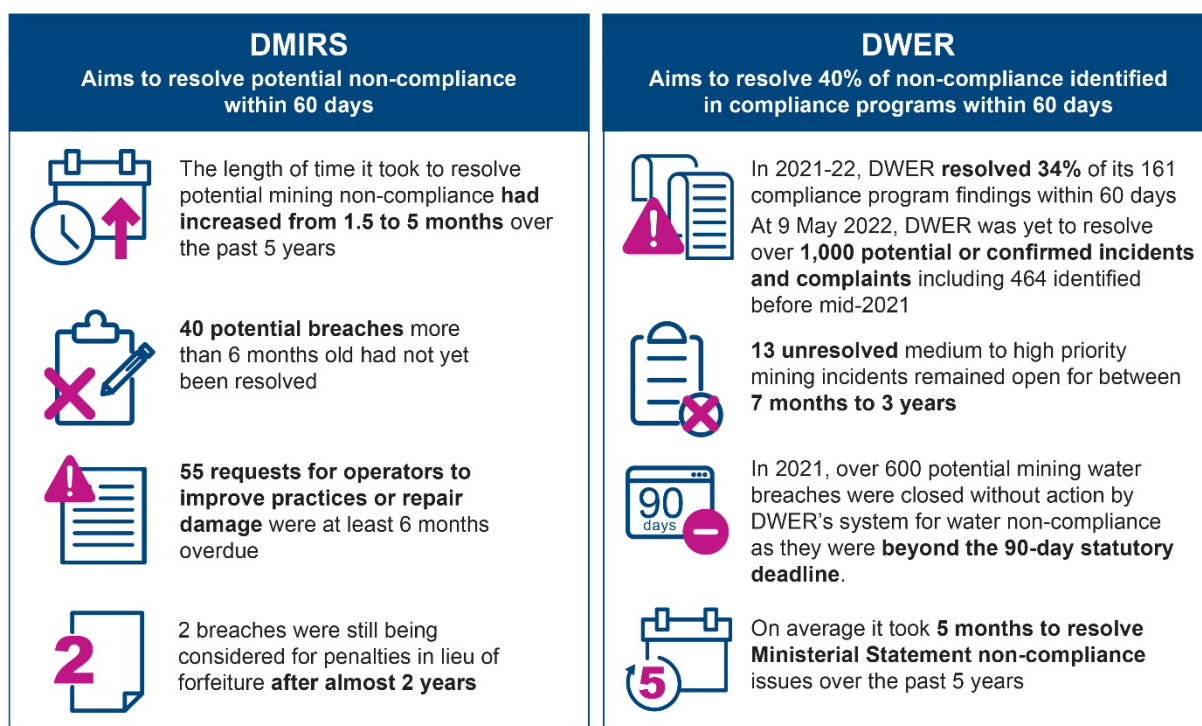
Source: OAG based on existing mining approvals

**Table 2: Examples of poorly worded conditions**

There is no efficient way for entities to provide compliance learnings to each other. For example, in one instance DWER requested DMIRS take groundwater protection requirements into account when setting conditions for mining licences and provided other input on the enforceability of conditions. The issue was not fully resolved, despite seven meetings over 18 months. Use of available information and continual improvement are key elements of the regulatory cycle. Without efficient means to ensure conditions identified as unenforceable are not used again, ineffective conditions may continue to be set, reducing effective mining regulation.

**Entities are slow to take enforcement action**

Entities have not resolved identified non-compliance in a timely manner (Figure 7). Neither met their 2021-22 targets for closing suspected issues within 60 days. Further, DMIRS did not promptly follow-up to ensure directions are implemented and DWER had not resolved potentially serious non-compliances after several years (Case study 3). Operators may be less deterred from taking action in a timely manner if there is little pressure to do so, leading to potential environmental impacts and liabilities for the State. Both told us they triage breaches and focus resources on high-risk matters.



Source: OAG based on DWER and DMIRS information

**Figure 7: Response timeframes for non-compliance<sup>11</sup>**














### Case study 3: Slow enforcement responses

- In 2017 and 2018, DMIRS issued three petroleum operators with directions to decommission wells and rehabilitate sites. The directions expired without being complied with. At the time of audit, no operator had been penalised, although these cases remain open as DMIRS explores options.
- In April 2018, an operator asked DWER for permission to pump contaminated water from an overfull tailings dam to a storage reservoir. DWER advised that this can only be done in an emergency and must be reported immediately. Inspectors visited the mine in December 2018 and discovered it had become standard process to pump wastewater into a decoy pond intended to attract animals away from the tailings dam. DWER rated the matter high priority, but it remained unresolved at the time of audit.

### Lack of published compliance information reduces social pressure

Entities do not effectively publicise operator non-compliance. Neither publishes the results of compliance assessments, although this has been a practice in jurisdictions such as the Commonwealth and New South Wales. Entities also do not publish details of companies that receive letters of warning (Table 3). Being transparent about compliance issues and enforcement actions can help entities leverage social pressure to promote compliance. During the audit, DWER drafted a Transparency First policy that aims to make non-sensitive information on the environmental impacts of operators available online by default.

<sup>11</sup> Numbers for DWER include all industries it regulates (such as waste and processing industries), as DWER does not separate incidents and complaints by industry. Further, some of the potential mining water licence breaches closed out by the system may have been raised in error but the data we were provided did not capture how many.

Information for potential publication	DMIRS	DWER
Results of inspections and desktop assessments		
Names of operators that have been successfully prosecuted, and nature of the offence		
Names of operators issued formal directions and other notices (per entity remits)		
Names of operators issued fines or forfeiture actions (as per entity remits)	In part**	
Names of operators issued warnings or letters of education		
Annual compliance program		
Operator annual compliance reports	In part***	In part***
Progress against compliance targets		

Source: OAG based on DMIRS and DWER information

\* DWER has powers to prosecute environmental non-compliance. DMIRS' remit in this area is largely limited to illegal mining rather than breaches of environmental conditions.

\*\* DMIRS publishes details of fines (Mineral Titles Online) by Tenement ID, not operator name. It also publishes the number of compliance and enforcement activities, the nature of breaches that resulted in fines and associated learnings for industry, in its Resource and Environmental regulation eNewsletter.

\*\*\* DMIRS publishes annual compliance report summary information, but at the operators' discretion and access to the information platforms requires readers to sign up. DWER publishes Audit Compliance Reports on its website and more recent Ministerial Statements require operators to make compliance reports public.

### Table 3: Visibility of compliance and enforcement information

If compliance activities and outcomes are not reported and accessible, stakeholders may think regulation is ineffective and lose confidence that environmental protection conditions appropriately manage risks to the environment, the community and the State. Our consultation with stakeholders, including a Land Council, during the audit identified this as a real concern. Publicly available information shows:

- In 2021-22, DMIRS issued two fines, two directions, 13 letters of warning and seven letters of education to mining companies.
- DWER has prosecuted five mining companies in the past five years (but has prosecuted 161 other individuals or operators for non-mining related offences such as illegal dumping). It has never prosecuted an operator under a Ministerial Statement.

Entities told us they actively work with companies to bring them into compliance and limit damage to the environment when they cannot take enforcement action due to vague licence conditions, legal limitations, low legislated penalty limits or difficulty proving environmental harm. We saw several compliance responses aimed at improving mining or reporting practices, including encouraging State Agreement project operators to align their operations with modern compliance requirements.



## Appendix 1: Wittenoom asbestos contamination

From the 1930s to the 1960s, mine workers and town residents were exposed to asbestos fibres from blue asbestos mining operations near Wittenoom in the Pilbara. The area became contaminated with asbestos dust through wind and water erosion of large stockpiles of mining waste (tailings), and from asbestos used in construction around the townsite.

According to the 1994 Select Committee Inquiry into the matter, the Mines Inspector and the Assistant State Mining Engineer reported on the dust issue as early as 1944. Other mining and health officials warned of its dangers in following years.

As the risks to human health became better known, medical tests and dust monitoring were conducted. According to the chronology of events presented by the Inquiry, little action was taken by regulators to address the risks beyond issuing further warnings and requesting the use of dust-reducing equipment.<sup>12</sup> Production was increased in 1961 despite evidence of the risks and mining did not cease until 1966, when the mine closed for economic reasons.

By 1989, over 500 past workers and residents had died from asbestos-related infections, with the final toll estimated to be in the thousands. In 2008, the area was classified 'contaminated-remediation required' and it remains the largest contaminated site in the Southern Hemisphere at 46,840 hectares.

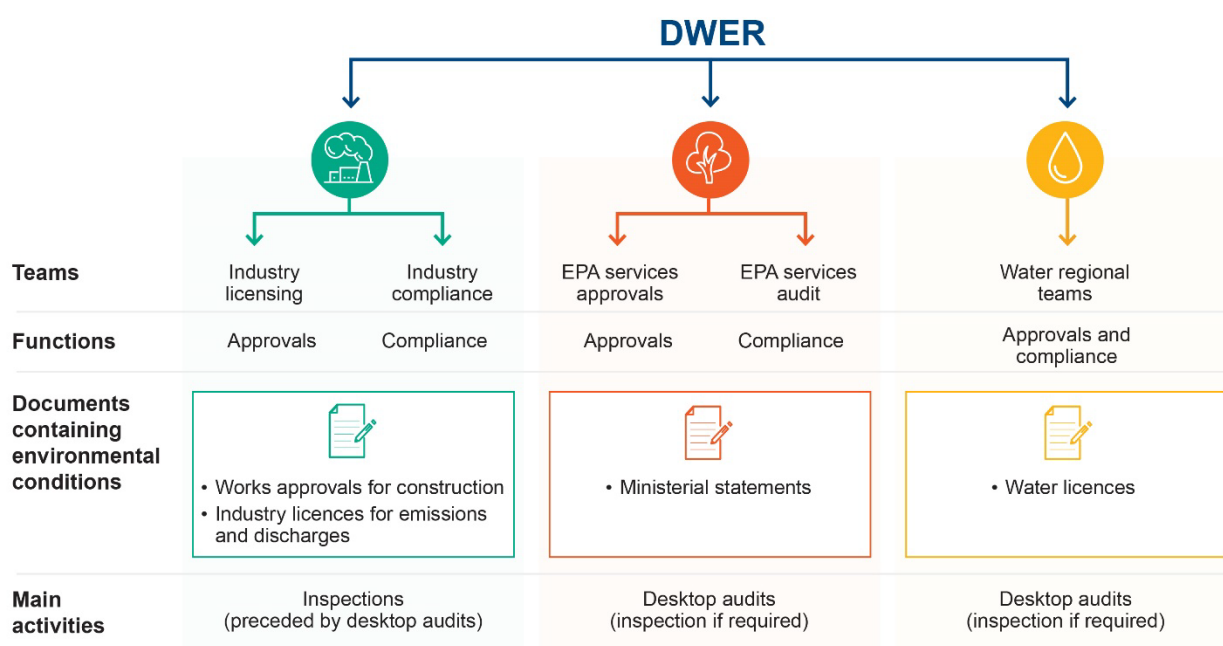
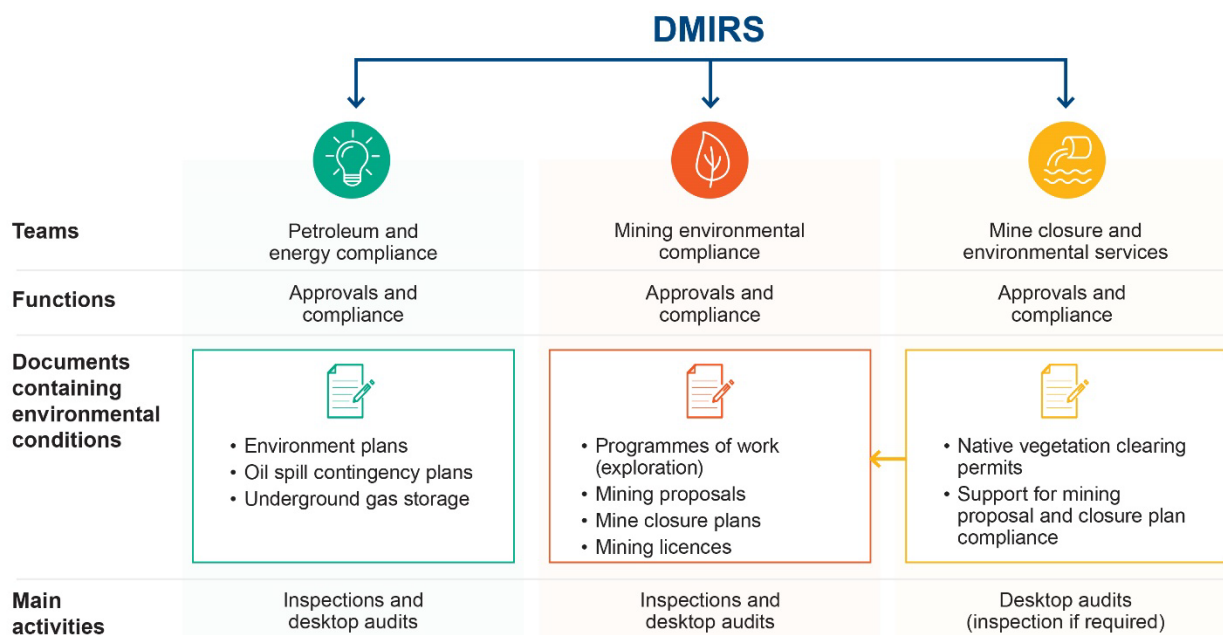


Source: Alan Bilborough/Shutterstock

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<sup>12</sup> Larry Graham JP MLA, [Report of the Select Committee Appointed to Inquire into Wittenoom](#), Legislative Assembly of Western Australia, Perth, 1994, Appendix 2.

## Appendix 2: Entity functions and structures



Source: OAG based on DMIRS and DWER information



## Appendix 3: Entity responses to audit recommendations

DMIRS and DWER should:

1. fully document the risk-based approach that underpins their compliance activities to address sector risks, including how they select sites for their compliance programs and complete risk assessments when changing the activities or sites, in the program

**DMIRS implementation timeframe:** Quarter 1, 2023

**DMIRS response:**

DMIRS accepts that further clarity is required on the risk-based approach it takes to compliance activities, and commits to fully documenting the risk-rating process it undertakes when assessing the environmental risk of a site, and how this risk assessment informs decision making for the compliance program. For transparency, DMIRS commits to making this information publicly available.

**DWER implementation timeframe:** December 2023

**DWER response:**

The department is reviewing, integrating and improving its compliance and enforcement framework through 2023 to ensure it reflects best regulatory practice. The outputs from this reform include processes for:

- identifying the key risks in the sectors we regulate;
- determining how our integrated, risk-based compliance programs should be developed and delivered at the sector and regional level;
- how and when the approved compliance program can be amended to address changing environmental and corporate/executive risks; and
- publication of our annual compliance programs and the key findings from the implementation of the program.

2. improve their compliance assessment processes to ensure appropriate, risk based, verification of operator self-reported information through independent sources such as publicly available technology (e.g. ground monitoring and aerial imagery) and regional partners (e.g. Traditional Owners and/or regional staff from other State and local government entities)

**DMIRS implementation timeframe:** Complete review by mid-2023

**DMIRS response:**

DMIRS accepts that its compliance processes could be enhanced through the verification of self-reported operator information, and commits to a review of processes to identify methods to independently verify information reported by companies (e.g. aerial imagery, spatial data and use of third parties). Timing for the implementation of recommendations arising from this review will need to be determined following the outcomes of the review.

**DWER implementation timeframe:** December 2023

**DWER response:**

It is important that the department balances the regulatory burden on industry with the need for sufficient information to ensure we can verify claims of compliance.

The department will undertake a review of compliance validation options and determine the most appropriate approach(es) to adopt which may differ depending on the circumstances. Consideration will be given to a number of options including:

- the use of technology such as satellite, aerial and remote sensing imagery;
- provision of results from environmental monitoring programs;
- on-ground verification by departmental officers;
- requiring Annual Reports/Compliance Reports to contain sufficient evidence such as spatial data and photographs to verify claims of compliance;
- requesting information/evidence to validate compliance on an as needs basis as part of compliance audits;
- developing industry guidance on how to comply with approvals including the standard of evidence required to claim compliance; and
- collaborating and developing partnership with State and Local Governments and other entities to support compliance validation.

Processes relating to the selected option(s) will be documented as part of the reform of our compliance and enforcement activities in 2023.

3. [improve internal and inter-entity use of compliance and enforcement information to promote efficient access and informed regulation, for instance by:](#)
  - a. [collaborating on reporting requirements, resources and training](#)
  - b. [incorporating information-sharing mechanisms when developing digital platforms](#)

**DMIRS implementation timeframe:** Quarter 2, 2023

**DMIRS response:**

DMIRS acknowledges the benefits of cross-agency information sharing and will continue to work closely with other regulatory agencies to (where appropriate and practicable) share information relevant to compliance and enforcement actions. To strengthen this, a specific interagency compliance forum for practitioners will be established.

**DWER implementation timeframe:**

- MOU by July 2023
- On-going improvements to Environment Online to December 2024
- Reduced reporting project by end 2023-24

**DWER response:**

Environment Online will enable the department to deliver faster, more consistent and better integrated, data-driven compliance and enforcement activities. The system will bring all our regulatory deliveries, regulatory data, interactions, systems and activities into a single online platform. Environment Online also provides the potential for data sharing between the department and other State and Australian Government agencies. Following the launch of Environment Online in August 2022, the department is currently

planning future releases that will include compliance and enforcement features. At this stage the program of releases has not yet been finalised.

Alongside Environment Online the department is leading the development of a Compliance Memorandum of Understanding (MOU) to facilitate the sharing of compliance related information, assets and equipment and resources between six government regulatory agencies. The MOU adopts a share by default approach and empowers regulatory officers to share a range of information, equipment, eg drones and covert cameras, and staff with specialist skills eg drone pilots, with the aim of improving each agency's compliance and enforcement efficiency and effectiveness. The draft MOU is currently being reviewed by the State Solicitors Office prior to its finalisation and implementation.

In May 2022, Streamline WA's reduced reporting burden pilot project stopped or halved environmental reporting requirements for lower-risk industry licences. The project will be broadened to encompass the reporting obligations on other licences to reduce duplicative reporting processes across numerous regulatory agencies.

The department is already collaborating with other State Government agencies on staff training and development. Common Understanding Workshops are a whole-of-government approach to regulatory practice and a contemporary regulatory culture. Twice-yearly workshops are now being held to support cross agency approvals (including compliance), assessment, and case management officer training, to improve skills and understanding between regulators, break down silos and address emerging issues. Recent workshops have taken place between the department, DMIRS and the Department of Planning, Lands and Heritage. Further opportunities to collaborate on training will be explored through our Strategic Workforce Plan (see response to recommendation 6).

Through these initiatives the department will improve the capture and use of data and intelligence, improve the identification and management of common compliance issues across agencies and support cohesive collaboration on compliance and enforcement matters, including training, to deliver improved environmental and outcomes.

4. **strengthen their enforcement approaches to ensure effective action by including:**
  - a. **minimum indicative thresholds for action**
  - b. **guidance on how to resolve ineffective, unenforceable or unmonitorable conditions**

**DMIRS implementation timeframe:** Quarter 1, 2023

**DMIRS response:**

DMIRS recognises the need to strengthen its internal guidance material in order to provide clear guidance and thresholds for enforcement actions and promote consistent decision making around enforcement actions. DMIRS will review existing guidance material relevant to enforcement action within its Quality Management System for clarity and usability.

DMIRS also commits to reviewing the standard conditions imposed on all mining tenements in order to ensure conditions are enforceable and able to be monitored. DMIRS is already transitioning to risk-based, outcomes-focused conditions.

**DWER implementation timeframe:** September 2023

**DWER response:**

As part of the department's reform work to deliver a best practice compliance and enforcement framework the department will:

1. Review all the available enforcement powers and tools in the legislation we administer and identify minimum thresholds for using these powers and enforcement tools. We will be transparent to our regulated stakeholders by reviewing, consulting on, and publishing amendments to our externally facing Compliance and Enforcement Policy (C&E Policy) to set out our enforcement approach. We will also provide internal guidance and training to our officers on the use of our enforcement powers.

The department delegates a number of its enforcement powers to other entities including Local and State Governments. We will ensure that we fully engage with these entities in the development of our revised C&E Policy, review and revise delegations and administrative agreements as necessary, and provide support for the training of officers with delegated powers to ensure consistency in enforcement approach.

2. Improve our effectiveness in closing the regulatory cycle. We will:
  - a. consider how compliance and enforcement findings and data can be used to assess the on-going effectiveness and suitability of legislation, policy and regulatory instruments;
  - b. develop compliance and enforcement intelligence, data collection and capture requirements to inform these assessments of legislation, policy and regulatory instruments; and
  - c. develop processes and schedules for interrogating intelligence and data and specifying the steps to be taken to address ineffective, unenforceable or unmonitorable regulatory instruments and influence improvements to legislation and policy.
5. [consider publicly releasing information on operator compliance and non-compliance to promote transparency and encourage compliance, and document this consideration](#)

**DMIRS implementation timeframe:** Quarter 2, 2023

**DMIRS response:**

DMIRS acknowledges that the public release of information relevant to non-compliances may assist with promoting compliance within industry. DMIRS commits to investigating its ability to list the operator name alongside the non-compliance information it currently releases, and, pending outcome of this investigation, implementing this change. This will be considered in conjunction with strengthening of enforcement processes per previous recommendation.

**DWER implementation timeframe:** June 2023

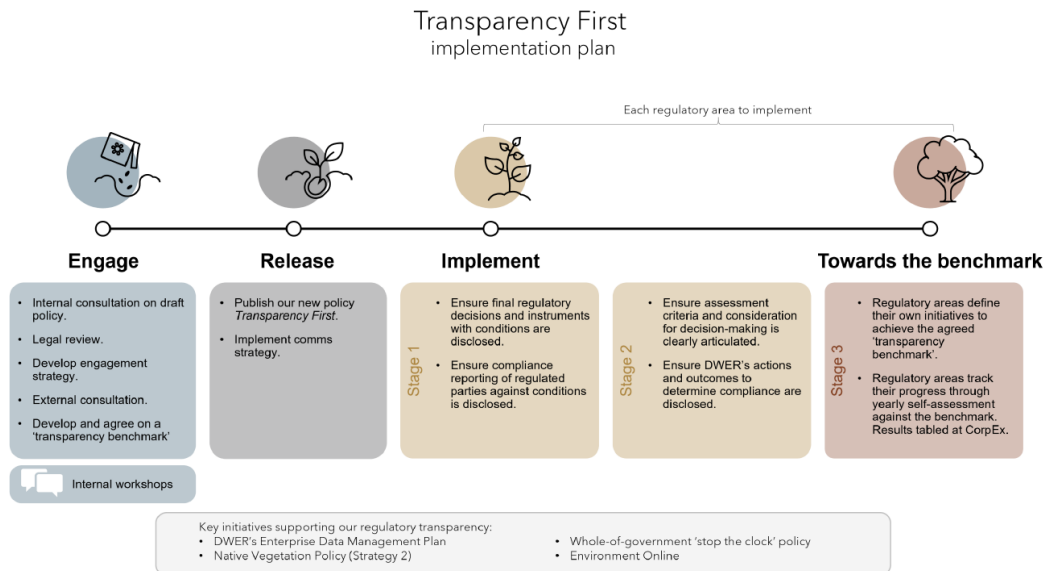
**DWER response:**

Our Transparency First Policy is currently in development. The Policy aims to set out a number of transparency principles and a regulatory transparency benchmark that the department will adopt so that the department's regulatory decision making and policy making processes, together with the technical information and data supporting them are publicly available. We have developed an Implementation Plan for the Policy which is summarised in Figure 1. We are currently in the 'engage' stage with roll out of the Policy anticipated in 2022-23 followed by a staged implementation approach.

The department currently publishes copies of Environmental Protection Notices, Prevention Notices and outcomes from Prosecutions (unless subject to a court suppression) on its website. As shown in the figure below, expanding the scope of

compliance and enforcement information that is publicly available is proposed in Stage 1 and 2 of the Transparency First Policy Implementation Plan.

The department will develop guidance for our staff covering the scope of information that must be made publicly available and the process for achieving this together with guidance on the scope of information that must not be made public with clear explanations for why the information is restricted.



Source: DWER

- prioritise plans to restore their compliance activities, as part of delivering a balanced regulatory approach.

**DMIRS implementation timeframe:** Quarter 2, 2023

**DMIRS response:**

Following the conclusion of DMIRS' COVID-19 response, implementation of its Approvals Response Plan, and multiple recruitment campaigns DMIRS' standard regulatory protocols are now normalised and in effect, with resources redirected back to environmental compliance activities in order to reaffirm DMIRS' regulatory presence within Western Australia.

In order to strengthen its regulatory protocols, DMIRS has also recently revised its Divisional organisational structure, creating a dedicated Compliance and Enforcement team (for mining matters) within the Resource and Environmental Compliance (REC) Division in February 2022 and has bolstered the Division's capacity to conduct investigations in the Division through the appointment of Investigation Officers. Collectively this will allow DMIRS to coordinate its compliance program, improving the management of non-routine compliance and enforcement activities as well as providing advice and support more broadly within DMIRS on compliance matters.

Further consideration of whether these actions in progress are sufficient to improve the level of regulatory compliance action expected will be given through the review of compliance processes (refer recommendation 2).

**DWER implementation timeframe:** On-going

**DWER response:**

Building a best practice compliance and enforcement framework is a priority for the department as we understand its importance in delivering a balanced, wholistic and effective regulatory approach.

The department has commissioned an internal audit to ensure we understand where and how compliance and enforcement activities are currently undertaken across the organisation. This audit is due to report back shortly but early findings indicate that compliance and enforcement activities are undertaken across multiple (at least 5) Directorates with multiple regulatory frameworks employed.

Through our reform program the department will seek to build its new best practice framework by integrating all compliance and enforcement activities. This will support effective service delivery by reducing duplication and increasing regulatory consistency and efficiency.

We will also develop a Strategic Workforce Plan that identifies the capacity and capability required to develop and implement our best practice framework, identifies any gaps in our current workforce and specifies interventions that we will adopt to ensure we address these gaps and ensure we have the right skills in the right place at the right time.



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## Auditor General's 2022-23 reports

Number	Title	Date tabled
10	Regulation of Commercial Fishing	7 December 2022
9	Management of Long Stay Patients in Public Hospitals	16 November 2022
8	Forensic Audit Results 2022	16 November 2022
7	Opinion on Ministerial Notification – Tom Price Hospital Redevelopment and Meekatharra Health Centre Business Cases	2 November 2022
6	Compliance Frameworks for Anti-Money Laundering and Counter-Terrorism Financing Obligations	19 October 2022
5	Financial Audit Results – Local Government 2020-21	17 August 2022
4	Payments to Subcontractors Working on State Government Construction Projects	11 August 2022
3	Public Trustee's Administration of Trusts and Deceased Estates	10 August 2022
2	Financial Audit Results – Universities and TAFEs 2021	21 July 2022
1	Opinion on Ministerial Notification – Wooroloo Bushfire Inquiry	18 July 2022

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