

Water Risks in the Mining Sector Western Australia

As of July 2016

1. Overview of legal system in Australia¹

Australia is a Commonwealth federation comprising of six states and two self-governing territories. The Commonwealth Constitution sets out which competences are governed by the Federal (Commonwealth) government and which are in the purview of the states.

Minerals and mining activities are regulated at the state, rather than the federal level. However, in several areas, including the environment, the Commonwealth has some regulatory powers which take precedence over any inconsistent state legislation to the extent of an inconsistency between the two.

Most notably, where mining projects are likely to have a significant impact on (1) a matter of national environmental significance; (2) the project is located on Commonwealth land; or (3) the project is not located on Commonwealth land, but will or is likely to have an environmental impact on Commonwealth land, a mining project is subject to Commonwealth approval.

Australia has a common law system, based on the English system. This means that much of Australian law is taken from case law and precedent. Australia may look to both English and Australian cases as sources of law. Each state and territory has its own judicial system and courts. Federal courts only have jurisdiction on federal matters and the High Court of Australia hears appeals in relation to federal, state and territory matters.²

Please see the Annexures for descriptions of:

- (1) A hyperlinked and annotated list of key laws and policies regulating water use in Western Australia that briefly describes the relevance of each law and policy; and***
- (2) A hyperlinked list of key institutions involved in the regulation and monitoring of water use in mining in Western Australia including a description of relevant responsibilities of that institution.***

¹ This project was managed by CCSI Senior Legal Researcher, Sophie Thomashausen. Research was conducted by Joanna Eileen Capones and Chinedu Emmanuel Anede, LLM candidates at Columbia Law School, and peer reviewed by Charlotte Osbourne, as Associate at Norton Rose Fulbright in Australia.

² Keira Brennan, Mark Geritz, Stuart MacGregor & Sidney Tang, "Mining Law in Australia," *Practical Law Company* (2013).

2. Regulation of water use in the mining sector in Western Australia

Water Quantity questions		
No	Question	Answer
1.	Which authority is responsible for water allocation in Western Australia?	The Department of Water
2.	Water allocation process - How is water granted to a mining concessionaire/ permit holder? Is there a water licensing/ permitting process? A water market?	<p>Western Australia has a water licensing system and a water market.</p> <p>A 5C licence is required to take water from a watercourse, well, and/or underground water source (Section 5C of the Rights in Water and Irrigation Act 1914).</p> <p>The licence is renewable and transferrable/ tradeable. Any person holding a water licence that has legal access to the land the water is taken from may purchase a water entitlement. Applications for water entitlement transactions are to be submitted to the Department of Water, which will assess and approve the same.</p> <p>Permits from the Department of Water are also required for each of the following activities:</p> <ol style="list-style-type: none"> 1. Constructing, altering, or deepening a bore, well, or soak. Such a licence does not authorize the licensee to take or use the water from the bore (26D licence); or 2. Altering, obstructing, or interfering with the beds or banks of a watercourse (i.e. to install a pump or other structure to divert the flow, including a dam), without taking or using the water from the bore (Section 11/17/21A permits).
3.	Scope of a water allocation permit/ licence	
	(a) Requirements separate water permit – is a separate water permit required? What is the process for obtaining the permit	<p>Separate permits are required to appropriate ground water or surface water. Western Australia has a strict water licensing regime for assessing the water requirements of a mine and limiting mine waste discharge. The approval requirements for each mining project is done on a case-by-case basis depending on the scale and details of the proposed mining operation, and the level of demand or potential for impact on water resources.</p> <p>There are several steps for obtaining a water permit. See Annex C for a flow chart of the water licensing process:</p> <p>Stage A – Preliminary consultation:</p> <ul style="list-style-type: none"> - Occurs at the pre-feasibility stage of a mine project development

		<ul style="list-style-type: none"> - At this stage the mining company provides the department with an outline of the proposal, including a summary of proposed water requirements and an indicative water balance. - The mining company and the Department of Water must then establish a common understanding of the mining company's water requirements and challenges and identify critical issues that may prevent a water licence being granted. Key considerations include: <ul style="list-style-type: none"> o Regulatory requirements for abstracting and using water; o Water source options and their quantity and quality³; o Legal requirements for access to water sources; o Water demands of the mining project: Intended scale of the project, estimates of water use (consumptive e.g. ore processing and non-consumptive e.g. dewatering), and duration of project. o Management of dewatering volumes and use of surplus (either on-site or off-site); o Broad ecological, social and cultural values that may be impacted by water abstraction, including potential impacts on other local water users; o Need for efficient use of water; o Risk of major flooding. <p>Stage B — Scoping the water management task</p> <ul style="list-style-type: none"> - The mining company and the Department of Water determine the applicable regulatory requirements under the Rights in Water and Irrigation Act 1914 and confirm the scope of studies and investigations for the proposed mining project. <p>Stage C — Water licence application and Environmental Protection Authority assessment</p> <ul style="list-style-type: none"> - The mining company conducts the hydrogeological assessment and other investigations agreed upon in Stage B and submits an application for a 5C license, supported with all relevant documentation, to the Department of Water. See process diagram at: http://water.wa.gov.au/_data/assets/pdf_file/0019/3484/2.1.1-water-licensing-process.pdf - For mining operations involving dewatering and discharging water to the environment, a copy of environmental protection approval must be attached to the water licence application. <p>Stage D — Development of an operating strategy (if necessary) and final licence decision</p> <p>Where the Department deems it necessary, the mining company must finalize and submit an operating strategy, incorporating</p>
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³ Consider the potential water sources, and water quantity and quality requirements for the mining project. Options include: groundwater; surface water; recycled or reused water; surplus water (e.g. from dewatering); third-party supply (e.g. from other mine operations); desalination; scheme water supply; local or remote supply; and non-potable or potable water, noting that public drinking water source areas and/or drinking water source protection plans may exist or be required to protect drinking water quality.

		<p>relevant conditions and commitments under ministerial statements and set out in detail how water will be managed over the life of the project, for the approval of the Department of Water. Operational policy 5.08 provides that an operating strategy will be required where:</p> <ul style="list-style-type: none"> ○ licence conditions alone cannot satisfactorily address all water resource management issues related to that particular licence ○ the volume of water to be taken is significant ○ the taking of the water needs to be closely managed to ensure any impacts on the aquifer, environmental values or other water users are quantifiable and remain acceptable ○ the water resource being accessed requires stringent management ○ water is abstracted from several sources or from a large number of bores, and requires careful management ○ the taking of water by that particular licensee is critical for the well-being of the state and the community. <p>Once the Department of Water approves the operating strategy, it will finalise the assessment and issue the water licence.</p>
	<p>(b) Time required to obtain permits – how long does it generally take?</p>	<p>There is no set timeframe for the issuance of water licences. According to Operational policy no. 5.11, the Department of Water aims to undertake the preliminary review of the application and notify the applicant of further information requirements within 60 days for most applications. The process may take longer for complex or larger scale projects.</p>
	<p>(c) Duration of water permit</p>	<p>A licence may be granted or renewed for a fixed period or an indefinite duration as stated in the licence or renewal.</p>
	<p>(d) process for permit renewal</p>	<p>Applications for amendment of renewal of licence may be done online via https://online.water.wa.gov.au. Application forms may also be sent to the local Water Department office via post, email or fax. All applications must be submitted before the licence expiry date (recommended period is 60 to 90 days prior to expiry).</p> <p>Upon renewal of a water licence, existing licences may be amended to require identification of water-dependent ecosystems, where they were not included previously.</p>
4.	<p>How does the process of securing a water allocation relate to the general mining permit approval process (i.e. is a water</p>	<p>The DMP adopted a policy of parallel processing of environmental approvals to compress the approval timeframe for proponents. In accordance with this policy, DMP assesses and makes decisions on mining applications independent of other environmental and non-environmental approvals, including bore construction permits, water extraction licences or bed and banks permits issued by the Department of Water.</p>

	permit required before a mining permit, or is information about water use required for an EIA which is required for a mining permit)?	http://www.dmp.wa.gov.au/Documents/Environment/ENV-ADMIN-010.pdf
5.	Tariffs for water use Do mines have to pay for water usage? If yes, who sets the tariffs?	Payment for water is based on the quantity consumed as recorded by meters installed. Fee levels are set by the Water Corporation.
6.	Requirements for recycling water	Water use efficiency is encouraged in "Operational policy no.1.02– Policy on water conservation/efficiency plans: achieving water use efficiency gains through water licensing" (Department of Water 2009a).
7.	What rights, if any, does the relevant Authority have to change the amount of water allotted to a mine? Is the mining company allowed compensation for such changes?	The Minister for Water may grant or amend a license to a person ("benefitting licensee") which may result in the reduction of the quantity of water that another licensee ("affected licensee") will be able to take. In such case, the Minister may include in the new licence a condition that the benefitting licensee pay an amount, or periodical amounts of money, to the affected licensee for or towards direct pecuniary loss, or loss of profits, or both (if any), suffered by that person as a result of the reduction. The amount is to be agreed upon by the benefitting and affected licensees, or failing an agreement within a specified period, is to be determined by the Minister or by arbitration under the Commercial Arbitration Act 2012 (WA).

3. Regulation of water quality and waste water discharge in the mining sector in Western Australia

Water Quality questions		
No	Topic	Answer
1.	<p>Requirements for a permit for mine waste discharge</p> <p>Does a mine have to apply for a permit to discharge waste/ waste water into surrounding water courses? If so, what permits are required? What is the permitting process?</p>	<p>Schedule 1 of the Environmental Protection Regulations 1987 sets out the categories of ‘prescribed premises’ which require a licence under Part V of the Environmental Protection Act 1987. Category 6 of Schedule 1 provides that premises on which water is extracted and discharged (50,000 tonnes or more per year) into the environment to allow mining of ore are prescribed premises.</p> <p>The DER is responsible for regulating industrial discharges into the environment through a works approval and licensing process. A licence application can be submitted online at: https://www.der.wa.gov.au/our-work/licences-and-works-approvals</p>
2.	<p>Other licensing/permitting processes that cover water quality/discharge</p>	<p>The Environment Protection Act 1986 requires anyone who constructs, installs or alters any equipment for the storage, handling, transport or treatment of waste prior to, and for the purpose of, the discharge of waste, to obtain a works approval from the DER. The works approval application is made as part of the prescribed premises licence application described above (there is no separate form).</p>
3.	<p>Nexus with environmental impact assessments/ statements</p> <p>What is the process for obtaining an environmental impact assessment? At which stage of the mining process must it be obtained? To what extent are water issues covered in it?</p>	<p>The environmental impact assessment process is as follows:</p> <p>1. Pre-referral discussions The EPA, proponent and relevant decision-making authorities (“DMAs”) and government agencies will identify preliminary key environmental factors, stakeholders to be consulted and information requirements for the proposal.</p> <p>2. Referral to the Environmental Protection Authority (“EPA”)</p>

	<p>Where a mining proposal appears to be a significant proposal under the Environmental Protection Act 1986 (the “EP Act”), the DMP is required to refer it to the EPA. Proponents may also choose to refer a proposal directly to the EPA.</p> <p>3. Publication and Comment Period</p> <p>Once the EPA has enough information about a referred proposal, the EPA publishes the referral information on the EPA website. The EPA provides a public comment period of seven days before making a decision on whether or not to assess the proposal.</p> <p>If the EPA decides to assess, the next steps will depend on whether the project is classified under Assessment on Proponent Information (API) level Category A or B, or as Public Environmental Review (PER) level as follows:</p> <p>API LEVEL- CATEGORY A⁴</p> <p>4. Decision on whether or not to assess The EPA publishes its decision to assess and the level of assessment that will apply based on the potential impacts of the proposal on the environment. The EPA has 28 days to advise the proponent of its decision.</p> <p>5. Assessment/ Scoping If further consultation or information is required, the EPA issues an API scoping guideline as the basis for the conduct of an environmental review and report thereon. The proponent complies with the requirements and submits the API document to the EPA.</p> <p>If the consultation and information is deemed sufficient, the EPA assesses the proposal and seeks comment from the proponent and relevant DMAs and other government agencies on any draft recommended conditions.</p>
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⁴ A project will be classified under Category A if (i) the proposal raises a limited number of key environmental factors that can be readily managed and for which there is an established condition-setting framework; (ii) the proposal is consistent with established environmental policies, guidelines and standards; the proponent can demonstrate that it has conducted appropriate and effective stakeholder consultation, in particular with DMAs; and there is limited or local concern only about the likely effect of the proposal, if implemented, on the environment.

	<p>6. Submission and Publication of Assessment Report</p> <p>EPA submits the assessment report to the Minister of Environment and publishes the report.</p> <p>API LEVEL- CATEGORY B (environmentally unacceptable)⁵</p> <p>4. Notification of Preliminary Finding</p> <p>If EPA classifies the project as Category B, it notifies the proponent of this preliminary finding and provides the proponent with an opportunity to respond and provide further information or to modify the proposal.</p> <p>5. Assessment/ Scoping</p> <p>Where the proponent decides to proceed with the original proposal or further information does not demonstrate that the proposal is environmentally acceptable, the EPA publishes its decision to assess the proposal and the level of assessment as Category B. The EPA then assesses the proposal accordingly.</p> <p>If the proponent decides to no longer proceed with the proposal, the proponent may request the EPA to terminate the assessment proposal.</p> <p>6. Submission and Publication of Assessment Report</p> <p>EPA submits the assessment report to the Minister of Environment and publishes the report.</p> <p>7. Reconsideration</p> <p>If further information submitted by the proponent shows that the proposal could be environmentally acceptable, or further</p>
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⁵ A project will be classified under Category B if (i) the proposal is inconsistent with established environmental policies, guidelines and standards; or (ii) the proposal is likely to have a significant detrimental impact on an environmental value; or (iii) the proposal raises one or more key environmental factors or issues that do not meet the EPA's environmental objectives, having regard to the object and principles of the EP Act; and (iv) the proposal could not be reasonably modified or mitigated so as to ameliorate the issues raised in (i), (ii), or (iii).

	<p>detailed assessment is required, the EPA may reconsider its preliminary view.</p> <p>PER LEVEL⁶</p> <p>4. Decision on whether or not to assess The EPA publishes its decision to assess and the level of assessment that will apply based on the potential impacts of the proposal on the environment.</p> <p>The EPA advises the proponent whether the EPA or the proponent will prepare the environmental scoping document (“ESD”) and whether the ESD requires public review.</p> <p>5. Preparation of ESD</p> <p>The EPA or the proponent prepares the ESD. If the proponent prepares the ESD it may be released for public review.</p> <p>The purpose of the ESD is to (i) develop proposal-specific guidelines to direct the proponent on the preliminary key environmental factors or issues that should be addressed during the environmental review and preparation of the PER document; and (ii) identify the studies and investigations that need to be carried out. Where surveys and investigations have commenced prior to submission of the ESD, proponents are to demonstrate during the coping process that these surveys and investigations will provide the appropriate information required by the EPA.</p> <p>EPA may require public review of the ESD</p> <p>6. Preparation of PER document</p> <p>The proponent carries out the environmental review and prepares its report on the environmental review (PER document) that is</p>
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⁶ PER level of assessment will apply if the proposal meets any one of the following criteria: (i) the proposal is of regional and/or State-side significance; (ii) the proposal has several key environmental factors or issues, some of which are complex or of a strategic nature; (iii) substantial and detailed assessment of the proposal is required to determine whether, and if so, how the environmental issues could be managed; or (iv) the level of public concern about the likely effect of the proposal, if implemented, on the environment, warrants a public review period.

acceptable to the EPA, in accordance with the approved ESD.

7. Public review of PER document

The EPA releases the PER document for public review and provides a copy of the submissions to the proponent after the close of the public review period. The proponent provides a response to the issues raised to the satisfaction of the EPA.

8. Assessment/ Scoping

The EPA assesses the proposal and seeks comment from the proponent and relevant DMAs and other government agencies on any draft recommended conditions.

The EPA may conduct a public inquiry for the purposes of assessing a proposal.

9. Submission and Publication of Assessment Report

EPA submits the assessment report to the Minister of Environment and publishes the report.

Note that an action may also require referral to the Commonwealth Environment Minister under the Environment Protection and Biodiversity Conservation Act 1999 (“EPBC Act”) for a decision on whether it is a “controlled action” (that is, it is likely to have a significant impact on a matter of national environmental significance). If the Commonwealth Minister decides that it is a controlled action, it will need to undergo a formal assessment and approval process under the EPBC Act 1999 (Cth).

The assessment/ scoping phase of the EIA process also corresponds to Stage B of the water permitting process. The Department of Water is tasked to provide advice on water-related issues. In establishing whether a proposal would have significant effect on the environment, the Department of Water must apply relevant policies including the Operational policy no. 5.12 and Statewide policy no. 5 – Environmental water provisions policy for Western

		Australia, as well as relevant policies and guidance from the EPA.
4.	Are there regulations regarding the storage of tailings/ waste water by mines? ⁷	<p>The Department of Mines and Petroleum published the Tailings Storage Facilities in Western Australia Code of Practice in 2013. It describes:</p> <ul style="list-style-type: none"> • a set of outcomes for tailings storage facilities (TSFs) to meet the approval requirements of the project management plan under the Mines Safety and Inspection Act 1994 and Mines Safety and Inspections Regulations 1995, the mining proposal under the Mining Act 1978 and Mining Regulations 1981, and the review report under tenement conditions • the variables to be considered to demonstrate that a TSF is safe, stable, erosion-resistant and non-polluting • the role of the competent person in the hazard management process for TSFs • the broader occupational health and safety requirements for operating in accordance with the Mines Safety and Inspection Act 1994 and Mines Safety and Inspection Regulations 1995
5.	Acid mine drainage regulations	Environmental Protection (Controlled waste) Regulations 2004 list acid waste as controlled. The Regulations lay down stringent rules for unloading, transportation and disposal of controlled waste.
6.	Recycling requirements – Are there any requirements/ incentives for mines to recycle water/ minimize water discharge?	<p>Western Australia published a State Water Recycling Strategy in 2008, where water recycling was said to be a priority for government.</p> <p>In Stage B of the water permitting process discussed above, mining companies are asked, among others, to investigate lower quality water-use options for the project. As part of this, they should consider any opportunities to re-use or recycle water at all stages of the mine operation.</p>

⁷ Tailings are crushed rock particles that are transported hydraulically in a slurry form to a tailing impoundment or storage facility. The tailing solids are a mixture of sand, silt, and clay size particles. Tailings are sent to a tailing impoundment for disposition.

4. Monitoring

General questions		
No	Question	Answer
1.	Who monitors a mining operation's water quality to ensure compliance with legislation? And how often does such monitoring occur?	The mining company conducts regular monitoring, reports to the Department of Water and other agencies and uses adaptive management practices, as it manages the taking and use of water, in accordance with the licence and the approved operating strategy, throughout the life of the mine.

5. Regulation of water issues post-mine closure

Post-mine closure questions		
No	Question	Answer
1.	Requirements for closure:	
	(a) Closure plan: What are the requirements for a closure plan? Who approves it, if anybody?	<p>The Mine Closure Plan must contain the following:</p> <ol style="list-style-type: none"> 1. Cover Page 2. Checklist with corporate endorsement - Must be endorsed by a senior representative within the tenement holder/operating company 3. Table of Contents including a List of Figures, Tables and Maps 4. Scope and Purpose - Describe why the Mine Closure Plan is being submitted (i.e., as part of the requirement under the EP Act, tenement condition requirement, requirement under the Mining Act, or a combination of the above); must also detail the scope of plan. 5. Project Overview - Provides background information on the history and status of the project, including proposed and existing mining operations 6. Identification of Closure Obligations and Commitments

		<p>- All legal obligations relevant to rehabilitation and closure at a given mine site must be identified. This includes all legally binding conditions and commitments and/or legal obligations under relevant State and Federal legislation, references to individual tenement conditions, mining proposals, notices of intent, letters of intent, programmes of work, ministerial statements, commitments, licence conditions and all other legally binding documents.</p> <p>7. Stakeholder Engagement</p> <p>- The Plan must include a Stakeholder Engagement Register identifying the rehabilitation and closure consultation that has been conducted and a Stakeholder Engagement Strategy identifying the stakeholder engagement to be undertaken prior to the submission of the next revision of the Plan.</p> <p>8. Post-Mining Land Use and Closure Objectives</p> <p>- The Plan must include the post-mining land use(s) that had been proposed/agreed with key stakeholders including regulators; site-specific closure objectives consistent with those land use(s) that are realistic and achievable; and conceptual land reform design diagram(s).</p> <p>9. Development of Completion Criteria</p> <p>The completion criteria will be used to measure rehabilitation success and will demonstrate that the closure objectives have been met. They must be developed in consultation with key stakeholders and with DMP/EPA, and should be appropriate to the developmental status of the project.</p> <p>10. Collection and Analysis of Closure Data</p> <p>- Relevant closure baseline data must be collated to provide a basis to develop criteria or indicators for closure monitoring and performance; establish achievable closure outcomes and goals in a local and regional context; establish baseline conditions for closure monitoring programs, including the identification of reference sites; and identify the issues to be managed through the mine closure process.</p> <p>11. Identification and Management of Closure Issues</p> <p>- The Plan must include a risk assessment undertaken for undertaken for each iteration of the Mine Closure Plan identifying the environmental and regulatory risks, as well as the opportunities that need to be taken into account when planning for rehabilitation and closure.</p>
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		<p>(b) Bond requirements</p>	<p>Tenement holders operating on the Mining Act tenure (except tenements covered by state agreements not listed in the regulations) are required to contribute annually to the Mining Rehabilitation Fund (MRF).</p> <p>The amount of levy payable in respect of a mining authorization in a year is computed as follows:</p> $\text{RLE} \times \text{FCR}$ <p>where:</p> <p>FCR is the fund contribution rate of 1%</p> <p>RLE is the rehabilitation liability estimate for the mining authorization for the year. This is obtained by doing the</p>

		<p>following for each rehabilitation category: (i) working out the total area of land in the area of the mining authorization that was in that category on the assessment day in that year, (ii) multiplying the figure worked out above by the unit rate that applies to that category; and (iii) adding together all of the amounts for all rehabilitation categories.</p> <p>If the amount of RLE worked out is \$50,000 or less, no levy is to be imposed but disturbance data must still be reported.</p> <p>Money in the MRF will be used for rehabilitation where the tenement holder/operator fails to meet rehabilitation obligations and every other effort has been used to recover funds from the operator.</p>
	(c) Water quality/ Tailings dam requirements	<p>In its final closure and decommissioning phase, the mining company should implement the mine closure plan and, in the process, rehabilitate the site and adaptively manage the post-closure impacts on the surrounding water resources and environment.</p> <p>The Tailings Storage Facilities in Western Australia Code of Practice states that the mine closure plan must also include a decommissioning plan for TSFs. A competent person should conduct a review of the decommissioning and prepare a detailed assessment of the current condition of the TSF.</p>
2.	Post-mine closure monitoring requirements	The supervision of Post-mine closure falls within the joint supervision of both the Department of Mining and Petroleum and Environmental Protection Authority.
3.	Liability period - For how long, if at all, is a mine liable for water contamination after a mine has closed?	<p>Under the Contaminated Sites Act 2003, sites classified as “contaminated – remediation required” are required to be remediated. This provision does not provide for a liability period.</p> <p>The Mining Act also provides that the expiry, surrender or forfeiture of a mining tenement does not affect the liability of the holder for any act done in relation to the mining tenement.</p>
4.	Are there any reporting requirements in relation to a mine’s preparation for post-closure?	As discussed above, one of the requirements of the Mine Closure Plan is the discussion on closure monitoring and maintenance. The performance monitoring results will be reported to DMP or the EPA in an Annual Environmental Report (“AER”) and/or Triennial Environmental Report. The report must document progress against the agreed completion criteria and rehabilitation targets.

6. Enforcement/ Regulatory actions

General questions		
No	Topic	Answer
1.	Enforcement actions available to the government/ public authorities/ citizens take for breach of any of the relevant laws/ regulations	The enforcement process is closely related to monitoring. Under the National Framework for Compliance and Enforcement Systems for Water Resource Management, which Western Australia is a signatory to, there are levels (in a pyramid form) of enforcement in the form of encouraging and assisting compliance; directing compliance; and sanctions. http://www.environment.gov.au/resource/national-framework-compliance-and-enforcement-systems-water-resource-management
2.	Bodies responsible for regulatory enforcement and associated procedures	The Department of Water, Department of Environment Regulation and Department of Mines and Petroleum are each responsible for enforcing compliance under the legislation they administer.
3.	Is there an online database of penalties/fines related to water use in the mining sector	No database or knowledge management resource found.
4.	What is the procedure for bringing a case?	The relevant statutes do not provide for any special way for bringing an action before the courts. No court is specified in relevant water statutes. The term "competent court" was used a number of times in Water Agencies (Powers) Act 1984.
5.	Who has standing to bring a case?	The relevant Minister, or an officer of the relevant Department authorised by the Minister, may institute proceedings in the appropriate court.
6.	Statute of limitations	The general statute of limitation in Western Australia, the Limitation Act 2005, does not state any timeframe for bringing enforcement actions. It, however, recognizes that the Statute will be subordinate to any specific laws providing for limitation periods. The limitation period depends on the particular offence and it is necessary to have regard to the provision of the Act that has been breached. For example, the Environmental Protection Act 1987 (WA) specifies different time limits within which to

		commence a prosecution for Tier 1 and Tier 2 offences.
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Annexures

A. Relevant Legislation (policies, laws, and regulations) governing water use and waste water discharge in the mining sector

No.	Name of Legislation	Brief description of how it applies
Commonwealth Laws		
1.	The Australian Constitution	The Constitution sets out all of the matters that form the Commonwealth (federal) government's exclusive jurisdiction and all other matters are taken to be part of the jurisdiction of the State legislatures.
2.	Environment Protection and Biodiversity Conservation Act 1999 (the "EPBC Act")	<p>A federal Act that provides "a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places — defined in the EPBC Act as matters of national environmental significance."⁸</p> <p>A mining project requires assessment and approval as a "controlled action" for the purposes of the EPBC Act if it:</p> <ul style="list-style-type: none"> o will have or is likely to have a significant impact on a matter of national environmental significance; o is carried out on Commonwealth land and has, will have, or is likely to have a significant impact on the environment; or o is carried out on land outside Commonwealth land and has, will have, or is likely to have a significant impact on the environment on Commonwealth land.⁹ <p>Examples of matters that are considered to be of national environmental significance under the EPBC Act, or regulations passed pursuant to the EPBC Act include:</p> <ul style="list-style-type: none"> • World heritage properties; • Water resources, in relation to coal seam gas development and large coal mining development;

⁸ EPBA website: <https://www.environment.gov.au/epbc>.

⁹ Keira Brennan, Mark Geritz, Stuart MacGregor & Sidney Tang, "Mining Law in Australia," *Practical Law Company* (2013).

		<ul style="list-style-type: none"> • Wetlands of international importance (Ramsar wetlands); • Listed threatened species and ecological communities; • Migratory species; and • National heritage places.
	Environment Protection and Biodiversity Conservation Regulations 2000	The Regulations give effect to provisions of the EPBC Act dealing with environmental assessment and approvals, conservation of biodiversity, various conservation principles, enforcement, and administrative matters.
Western Australia laws		
Mining legislation		
	Mining Act 1978 (WA)	The Act regulates mining activities, mine closure and hydraulic fracturing.
	Mining Regulations 1981 (WA)	The Regulations give effect to the provisions of the Mining Act 1978 generally, for example the provisions for issuing permits and licences.
	Mines Safety and Inspection Act 1994 (WA)	The Act consolidates and amends the law relating to the safety of mines and mining operations and the inspection and regulation of mines, mining operations and plant and substances supplied to or used at mines.
	Mines Safety and Inspection Regulations 1995 (WA)	Lays down the procedural framework, occupational and environmental safety standards for the operation of mines.
	Mining Rehabilitation Fund Act 2012 (WA)	Provides for the establishment of the Mining Rehabilitation Fund, the declaration of abandoned mine sites, a levy payable in respect of mining authorisations and other related matters.
	Mining Rehabilitation Fund Regulations 2013 (WA)	Specifies how the new mining rehabilitation levy will be calculated; deals with administrative matters about reporting and assessment; lists the matters that the new Mining Rehabilitation Advisory Panel can advise upon and set out requirements about the membership and procedure of the Panel; and provide for infringement notices to be issued for late assessment information.
	Guidelines for Preparing Mine Closure Plans (WA)	Provides guidelines for a planning process to close, decommission and rehabilitate mines in an ecologically sustainable manner, consistent with agreed post-mining outcomes and land uses, and without unacceptable liability to the State.
Environmental legislation		
	Environmental Protection Act 1986 (WA)	Provides for an Environmental Protection Authority, for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment, and for incidental matters.

	<u>Environmental Protection Regulations 1987 (WA)</u>	Provides for the regulation of prescribed premises.
	<u>Environmental (Unauthorised Discharges) Regulations 2004</u>	Regulates prohibited discharge of specified contaminants in the environment.
	<u>Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012 (WA)</u>	Sets forth the procedures for the purposes of establishing the principles and practices of environmental impact assessment within the context of Part IV Divisions 1 and 2 of the Environmental Protection Act 1986.
	<u>Petroleum and Geothermal Energy Resources Act 1967 (WA)</u>	An Act relating to the exploration for, and the exploitation of, petroleum, geothermal, and certain other resources within Western Australia and for incidental purposes including the making of regulations relating to the environment.
	<u>Petroleum and Geothermal Energy Resources (Environment) Regulations 2012 (WA)</u>	Ensures that petroleum and geothermal activities within the State are carried out in a manner consistent with the principles of ecologically sustainable development and in accordance with an appropriate environment plan.
	<u>Contaminated Sites Act 2003 (WA)</u>	Provides for the identification, recording, management and remediation of contaminated sites.
	<u>Contaminated Sites Regulations 2006 (WA)</u>	The Regulations give effect to the provisions of the Contaminated Sites Act 2003.
Water legislation		
	<u>Rights in Water and Irrigation Act 1914 (WA) (RWIA)</u>	The RWIA provides for the regulation, management, use and protection of water resources. It contains the framework for licenses to take surface water, groundwater, or disturb waterways.
4.	<u>Rights in Water and Irrigation Regulations 2000 (WA)</u>	Sets out the procedural steps and requirements for licensing and other related issues.
6.	<u>Water Agencies (Powers) Act 1985 (WA)</u>	Act gives the Minister regulatory powers and establishes the Water Resources Ministerial Body and the Water Resources Council.
	<u>Waterways Conservation Act 1976 (WA)</u>	Makes provision for the conservation and management of waters and of the associated land and environment
	<u>Country Areas Water Supply Act 1947 (WA)</u>	Makes provisions to safeguards the supply and sources of water
11.	<u>Metropolitan Water Supply, Sewerage and Drainage Act 1909 (WA)</u>	Regulates industrial sites in proclaimed public drinking water source areas and sewage disposal.
	<u>Western Australian Water in Mining Guideline (May 2013)</u>	This guideline sets out the requirements for meeting the Department of Water's regulations for mining projects pursuant to the relevant

		WA water management legislation, ¹⁰ DW water policies, and water allocation plans.
	<u>Water Department's Operational policy 5.13: Water entitlement transactions for Western Australia (November 2010)</u>	Operational policy 5.13 provides a framework for the trading of water entitlements under the RWIA. The policy describes: <ul style="list-style-type: none"> •How to apply to transact a water entitlement; •Who is eligible; •The Water Department's criteria for assessment; •The role of water allocation plans; •How environmental issues are addressed; and •How the Water Department manages security interests.
	<u>Water Department's Operational policy no. 5.11: Timely submission of required further information (November 2009)</u>	Provides the typical timeframes for submitting further information required by the Department Water in relation to a licence application.

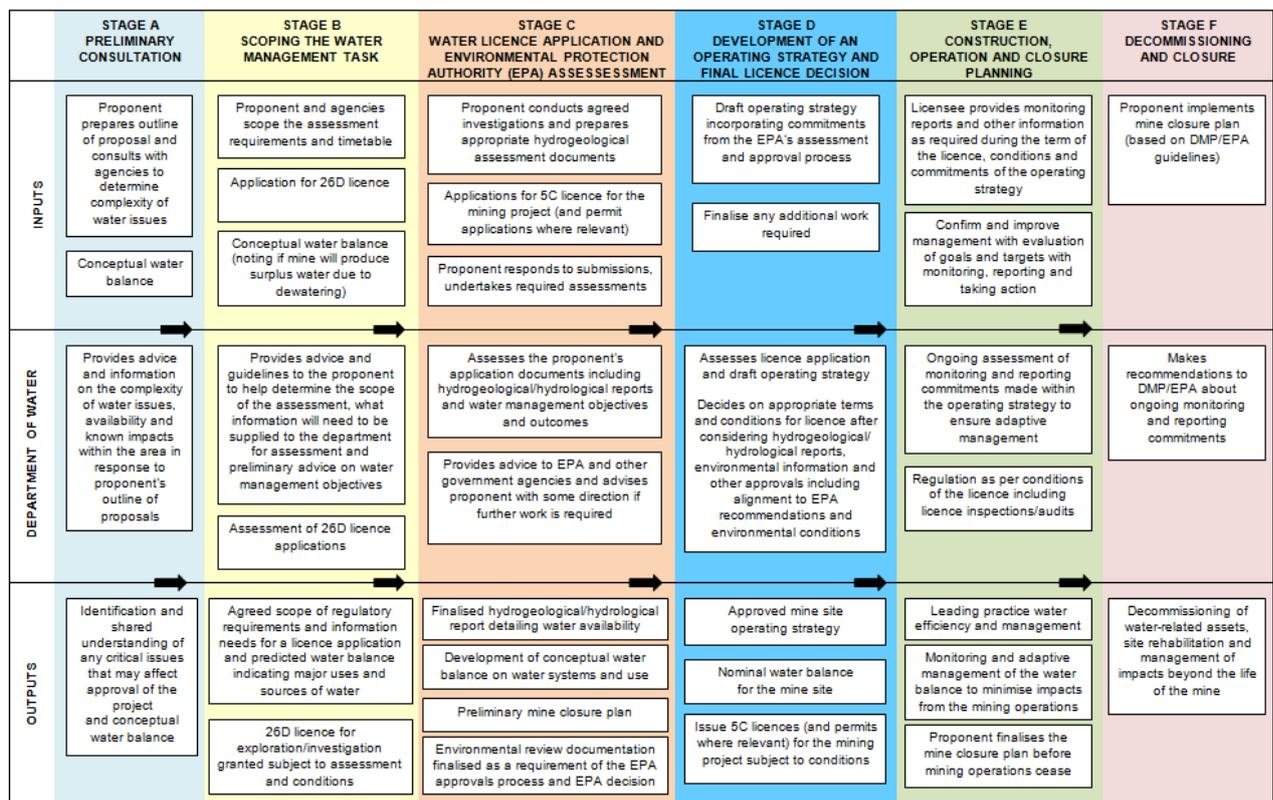
¹⁰ Rights in Water and Irrigation Act 1914, the Country Areas Water Supply Act 1947, the Water Agencies Powers Act 1984, and the Metropolitan Water Supply, Sewerage and Drainage Act 1909.

B. List of relevant ministries/ departments/ agencies/ authorities involved in the regulation of water in the mining sector

No.	Name (In English and local language)	Brief description of its role
Commonwealth		
	The Australian Department of the Environment	The Department of the Environment designs and implements the Australian Government's policies and programmes to protect and conserve the environment, water and heritage and promote climate action.
Western Australia		
	Department of Mines and Petroleum (DMP), Government of Western Australia	The DMP is responsible for ensuring that Western Australia's resources sector is developed and managed responsibly and sustainably for the benefit of all Western Australians. In particular, the DMP regulates Western Australia's extractive industries sectors, is responsible for the collection of royalties, and oversees the Geological Survey of Western Australia .
	Department of Water, Government of Western Australia	The Department of Water is responsible for the management of WA's water resources and the issuance of water permits.
	Water Corporation	The Water corporation is a private enterprise which is wholly-owned by WA's Minister of Water. It provides water, waste water and drainage services throughout Western Australia.
	Department of Environment Regulation (DER), Government of Western Australia	The DER: (1) regulates activities that have a potential impact on the environment; (2) develops and implements strategies and policies that promote environmental outcomes; and (3) implements strategies to reduce the impact of waste on the environment.
	Environmental Protection Authority (EPA), Government of Western Australia	The EPA is an independent body comprised of five members appointed by the Governor of Western Australia on the recommendation of the Minister for Environment.

	<p>The EPA's functions are governed by the Environmental Protection Act 1987 (WA) and include:</p> <ul style="list-style-type: none"> • conducting environmental impact assessments • preparing statutory policies for environmental protection • preparing and publishing guidelines for managing environmental impacts, and • providing strategic advice to the Minister for Environment.
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C. Summary process flowchart of how to obtain a water permit in Western Australia¹¹



¹¹ Water Policy Guide