

Department of the Premier and Cabinet

IMPROVING THE APPROVALS PROCESS

December 2008

CONFIDENTIAL

TABLE OF CONTENTS

PURPOSE	3
1. Introduction	5
2. A Way Forward	7
3. Short term measures	10
4. Legislative measures	19
5. Substantive reforms	27
6. Attachment I - Background	29
7. Attachment II – Scope of factors	30
8. Attachment III – Current reviews	32
9. Attachment IV - Functions of the DGs Working Group	33
10. Attachment V – Departmental overview	34

PURPOSE

To advise the Premier and Ministers on a way forward to improve the approvals processes in Western Australia, consistent with Cabinet's decision of Monday 13 October 2008.

RECOMMENDATIONS

It is recommended that the Premier and Ministers:

1. Agree to short term measures being announced by the Premier for immediate implementation consistent with section 3 as soon as practicable.
2. Agree that DPC will submit a Minute seeking Cabinet approval on 22 December 2008 to draft administrative amendments to various Acts (see section 4) for introduction in Parliament in Autumn 2009.
3. Agree to undertake a comprehensive review of the *Aboriginal Heritage Act 1972* with a view to introducing a Bill in Spring 2009. The Directors General Working Group will steer the review of the Act as it pertains to approvals processes.
4. Agree to establish a Ministerial Taskforce on Approvals and Major State Development Projects comprising the Premier, Ministers for Regional Development, Mines and Petroleum, Planning, Indigenous Affairs and Environment to oversee implementation of short term measures; determination of longer term reforms required to improve the approvals processes; and, to fulfil the election commitment to establish an Environmental Ministerial Taskforce.
5. Approve the establishment of the Directors General Working Group and agree that the Directors General Working Group will:
 - A. Develop a framework for resources development that outlines the State's infrastructure and development priorities consistent with Government policy for consideration by the Ministerial Taskforce in April 2009 and public dissemination subsequently.
 - B. Develop criteria that identifies the major metropolitan and regional projects that may qualify for approvals assistance and or investment facilitation services from the Department of Industry and Resources (Department of State Development) for release by March 2009.
 - C. Coordinate and monitor the implementation of agency specific short term initiatives (section 3), and to present the Ministerial Taskforce and the Premier with quarterly reports.
 - D. Develop and formulate options for the electronic tracking of applications across the public sector for consideration by the Ministerial Taskforce in April 2009.
 - E. Analyse the findings of recent reviews, consult with stakeholders and develop whole-of government outcomes-focused models with efficient, accountable and transparent governance arrangements for legislative reforms to be introduced during the 2009 Spring Session.
6. Note that the Department of Industry and Resources (Department of State Development) will:

- coordinate the approvals processes for major projects, such as the Oakajee Port, Ord Stage II, Kimberley Hub, South West Gas Pipeline, Gorgon, Wheatstone and industry and iron ore projects in the Pilbara.
 - assist and engage with proponents regarding approvals (for major projects).
7. Note that the Minister for Mines' Industry Advisory Group, the Environmental Impact Assessment Reference Group and the Land and Housing Industry Reference Group will liaise with the Directors General Working Group and input into the Ministerial Taskforce;
 8. Note that DPC will consult widely on the draft Bill, including the Chamber of Minerals and Energy, Conservation Council, Chamber of Commerce and Industry, the Urban Development Institute of Australia and the World Wildlife Fund (WWF).
 9. Note that the Premier will release a media statement.
 10. Note the executive summary "Improving Approvals Processes" prepared by the Directors General Working Group.

1. INTRODUCTION

Environmental, planning and heritage approvals underpin development in Western Australia. Responsibility for the administration of statutes rests with the Ministers for Planning, Environment, Mines and Petroleum/State Development, Indigenous Affairs and Water. Development is critical to the sustained growth of the Western Australian economy.

Major resource projects are the primary drivers for land, housing and infrastructure. The resources sector in Western Australia has expanded significantly since 2004. In 2007 the value of sales of Western Australia's resources was over \$53 billion, an increase of 87% since 2004, and accounted for 30% of the Gross State Product. In 2006-07, the Government spent around \$83 million on the approvals processes¹.

During 2006/07, the population of Western Australia grew by 46,700, approximately 2.3%, with 75% of the growth concentrated in Metropolitan Region and 25% in the regions. The Urban Development Institute of Australia, WA Division (UDIA) notes in its submission to the Land and Housing Review that the "complexity of the current regulatory environment is patently not in the public interest, particularly in a context of high and sustained population growth. The financial impact on households...has resulted in escalating land prices as land release is delayed by infrastructure provision and environmental approvals" (page 5).

The current approvals system in Western Australia comprises a variety of discrete approvals requirements set out in various statutes. Responsibility for the administration of these varied approvals processes rests with several State and Commonwealth agencies and statutory authorities. As has been noted in various recent reviews, approvals processes are generally undertaken sequentially or consequentially, and approvals processes may vary depending on the size, location and type of activities proposed, as well as potential impacts. Further, requests for approval in one area such as planning may trigger or inform another set of approvals requirements in another area such as native title or environment. It is emphasised that the trajectory of approvals between state infrastructure and major projects may vary.

Assessing the desirability of development, particularly large scale development is a complicated process. In the past, there was a general presumption that economic criteria were decisive. More recently, it has been acknowledged that social and environmental factors also affect the design, procedures and scope of development. Community input, formal environmental and social impact assessments and appeals are now embedded in statutes. The challenge facing Government is to incorporate these legislative requirement and community expectations within a balanced and orderly and expeditious governmental decision process.

On Monday 13 October, Cabinet requested "the Premier in conjunction with the Ministers for Regional Development, Mines and Petroleum, Planning and Environment to bring a further submission to Cabinet making recommendations on the improvement of Western Australia's approvals processes".

The Department of Premier and Cabinet formed an inter-agency working group to draft initial advice for consideration by the Ministerial Group. Attachment I details membership and functions of the group.

This paper outlines:

- A way forward to improve the approvals processes;
- Lists short term non-legislative measures that may be implemented, and legislative measures that could be introduced in Parliament in Autumn 2009;
- Proposes that the Government consider other longer term measures to improve the approvals processes in February 2009.

2. A WAY FORWARD

The Directors General Working Group has prepared a report that identifies administrative initiatives where implementation can commence within the next three months.

The short term administrative measures seek to improve coordination between agencies, minimise procedural duplication, expedite approvals processes and assist proponents seeking approvals. These are set out in section. Specific initiatives designed to improve time frames and track applications and examples include:

- Standardising appeal forms for all appeals under the *Environmental Protection Act*;
- Reviewing the clearing condition setting procedures and updating the Clearing Permit System Database; and
- Introduce short track subdivision for simple subdivisions up to five lots to all metropolitan local governments.

Measures to improve coordination, introduce parallel processes and minimise duplication include:

- Revising the Memorandum of Understanding between the Environmental Protection Authority and the Department of Industry and Resources to include a risk based approach that enables the identification of those activities that need to be referred to the Authority.
- Revising the current Memorandums of Understanding between the Environmental Protection Authority and the Department of Planning to once overarching Memorandum to include referral and assessment of schemes as well as strategic and structural plans.
- Reviewing mining tenement conditions for conservation reserves and other DEC lands to address outdated mining tenement conditions

Initiatives designed to assist proponents include:

- Publication of publish new or revised guidelines and approvals checklists relating to statutory requirements by the Departments of State Development, Environment and Conservation and Indigenous Affairs.

To ensure a coordinated whole of government approach the Directors General Working Group will:

- Develop a framework that outlines the State's infrastructure and development priorities for consideration by the Ministerial Taskforce in April 2009 and public dissemination subsequently.
- Develop criteria that identify the major metropolitan and regional projects that may qualify for investment facilitation and approvals assistance from the Department of State Development for release by March 2009.
- Coordinate and monitor the implementation of agency specific short term initiatives, presenting the Ministerial Taskforce and the Premier with quarterly reports.
- Develop and formulate the electronic tracking of applications across the public sector.
- Analyse the findings of recent reviews, consult with stakeholders and develop models with efficient, accountable and transparent governance arrangements for consideration by the Ministerial Taskforce in March 2009.

In addition, the Department of Industry and Resources (Department of State Development) will, as part of its new role and functions:

- coordinate the approvals processes for major projects, such as the Oakajee Port, Ord Stage II, Kimberley Hub, South West Gas Pipeline, Gorgon, Wheatstone and industry and iron ore projects in the Pilbara;
- assist and engage with proponents regarding approvals (similar to the functions undertaken by the Office of the Development Approvals Coordinator).

The Directors General Working Group also recommends the introduction of minor legislative amendments to streamline approvals, ensure greater certainty for proponents and decision makers under the *Environmental Protection Act 1986 (EP Act)*, *Mining Act 1978*, *Strata Titles Act 2005* and the *Planning and Development Act 2005*. It is proposed that a Bill amending these statutes be introduced in Parliament during the 2009 Autumn session.

Approval to draft will be sought from Cabinet and the Bill coordinated by the Department of Premier and Cabinet.

While the Department of Indigenous Affairs also identified provisions for amendments contained in the *Aboriginal Heritage Act* that could be amended to streamline processes, ensure, it would be more effective to undertake a more comprehensive review of the Act.

To date the Minister for Regional Development has submitted a model proposing a new set of governance arrangements to administer approvals for development. This is timely and reflects the current preoccupation with streamlining approvals processes across Australia. Issues such as transparency, accountability, duplication and managing competing interests, risk aversion are some of the matters being considered in these reviews (see Attachment IV) for a list of reviews). It is proposed that the Directors General identify the key principles underpinning effective approvals arrangements and develop models for consideration by the Ministerial Taskforce based on the findings of these reviews and in consultation with the working and reference groups that have been established by Ministers.

Governance arrangements

The Government's plan for "Environmental Sustainability and Water Management" states that "a Liberal Government will establish a high-level ministerial taskforce to review all environmental legislation and approvals processes and to recommend changes required to ensure they meet world's best practice on biodiversity conservation and sustainable development" The policy statement also stipulates that the taskforce will be chaired by the Minister for the Environment and include the Minister for State Development, the Minister for Industry and the Attorney General, and will provide its first report to Cabinet within six months.

It is proposed that the Ministerial Group convened to examine the approvals processes for Cabinet consideration be expanded to be the Ministerial Taskforce on Approvals, Development and Sustainability, comprising:

- Premier and Minister for State Development (Chair)
- Minister for Regional Development

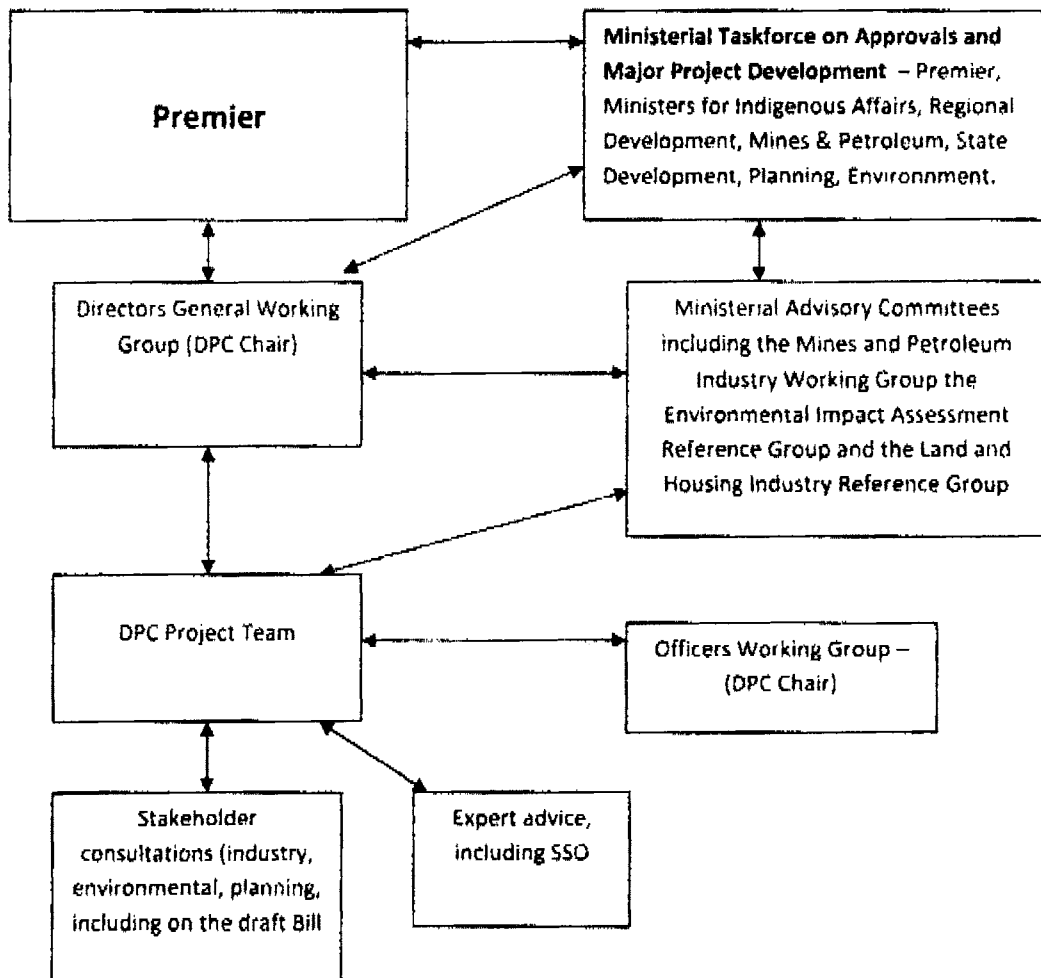
- Minister for the Environment
- Minister for Mines and Petroleum
- Minister for Planning
- Minister for Indigenous Affairs

It is also proposed that the Ministerial Taskforce liaise with various industry and other stakeholder group to ascertain their views about improvements to the approvals process.

The following diagram illustrates how the Taskforce would interact with other ministerial advisory bodies and working group.

The Directors General working group's would support the Taskforce, and its functions are at Attachment V.

DIAGRAM I - GOVERNANCE ARRANGEMENTS



3. SHORT TERM MEASURES

There are various categories of approvals, including:

- Resources development projects of state significance: for example the Ord River Scheme, mining projects of state economic and social significance;
- Infrastructure Projects of state significance: for example the Oakajee Port project, the Fiona Stanley (teaching) Hospital;
- Residential, employment and public and private infrastructure projects of regional significance (including metropolitan region): this would include include significant housing projects in Pt Hedland, regional waste water treatment plants in Perth, the desalination plant in the South west (Binningup), industrial estates in Peel, the Albany foreshore development.

The proposed short term mechanisms are based on the issues identified by agencies, are cognizant of the findings of recent reviews and the variables that may impact upon proponents such as:

- ability of the proponent to liaise, negotiate and traverse government processes;
- size, significance of impacts and complexity of the project proposal
- area (planning, environment or heritage) of approvals sought; and
- nature of development (mining, resource, residential, commercial or state development).

Attachment VI gives an overview of the current factors that affect approvals processes.

Short term measures have been categorised to address issues that have been identified in recent reviews and address critical matters such as efficiency, duplication and access to information.

It is proposed that the Directors General working group steer and coordinate a whole of government strategic approach, including implementation of key recommendations of recent reviews and oversight of emerging findings.

Preliminary discussions indicate that additional measures are necessary to address specific regional concerns. The benefits of longer term regional planning across the whole of the State include enhancing the context for specific project planning for larger scale projects as well enabling the identification of potential impediments to small scale projects and land access earlier in the approval process. Part of the dissatisfaction of stakeholders involved in regional development may be attributed to these factors, that is dissatisfaction with the outcome of the approvals process rather than the effectiveness and efficiency of the approvals processes itself.

The Directors General working group also note that current activities being undertaken on local government sustainability in consultation with local government and some key agencies may impact indirectly on approval processes administered by local governments. Regionalisation initiatives such as resource sharing, formation of regional local governments and other cooperative arrangements being promoted may assist in improving local government capacity to meet planning and development approvals demands.

ATTACHMENT I

IMMEDIATE ADMINISTRATIVE MEASURES

IMPROVING TIMEFRAMES, PROJECT MANAGEMENT AND TRACKING APPLICATIONS

	AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
1.	DOIR (DMP)	Progressive - as of Nov 2008.	Public approval timeline targets on website and timeline performance measures on a quarterly basis.	Mining and Petroleum industries.	Published by Feb 09 with quarterly reports as of March 2009. Target: 80% of mining proposal applications within 30 days.
2.	DEC	Jan 2009.	Upgrade the Clearing Permit System Database (CPS) to allow automatic reporting of the purpose, area and timeframes for decisions made on clearing permit applications.	All applicants for a clearing permit, reporting by key sectors (State development, agriculture, utilities, etc).	Publish quarterly reports commencing January 2009. Target for a decision: 80% of applications within 60 calendar days.
3.	DEC	Commenced.	Review clearing condition setting procedures to set conditions that are appropriate, enforceable and achieve best environmental outcomes in most efficient way.	Views expressed in ODAC review that permits focused on processes not outcomes	Outcome based conditions fully implemented and published in CPS by January 2009.

AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
4. DEC	April 2009.	Revision of the administrative agreement between DEC and DoIR in respect of clearing provisions to ensure effective arrangements between DEC and DoIR for the administration of clearing applications delegated to DoIR.	Addresses findings of DEC audit of DoIR. Applications to clear for mining, petroleum and State developed by DoIR. administered by DoIR.	Revised administrative agreement to be published by April 2009.
5. DEC	Commenced.	Publish timeframes achieved for decisions on works approvals and licences.	All applicants for a works approval or licence.	Publish quarterly reports as of March 2009. Target 60 days for works approvals and licences.
6. DEC	Commenced.	Revised industry regulation guidelines prepared and are being trialled with industry now.	Auditor General's report 2008. Independent Review of DEC's Inspection Policy and Protocols	Publish final guidelines by March 2009.
7. DEC	Jan 2009 and ongoing.	Improve support system to ensure computer systems are capable of supporting the licensing system administration and operation.	Auditor General's report 2008. Independent Review of DEC's Inspection Policy and Protocols.	Report in March 2009 to provide detailed direction for future system improvements (will need to be implemented).
8. OAC	Commenced.	Implementing standardised appeal form for all appeals under the EP Act.	All appeals.	New appeal form published by March 2009.

	AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
9.	DPI	Dec 2009.	Track all workload to enable monitoring and management of workload relative to resources and milestones, and mapping of parallel processes.	All applicants.	Quarterly reports.
10.	DPI	Commenced.	Introduce short track subdivision to all metropolitan local governments to expedite approval times for simple subdivisions up to five lots, currently limited to five local governments and three state government agencies	Individual landowners/investors	Full introduction by July 2009.
11.	DPI and DHW	Commence May 2009.	DHW to develop and submit a compliance audit (R-Codes and LG policy/scheme requirements) with development applications for grouped/multiple dwellings on zoned land requiring the WAPC approval.	Reduce approvals burden for public housing and will trial private sector certification.	Complete late 2009.
12.	EPA and DIA	Commenced.	Set target timelines for assessment process in revised Administrative Procedures. This will enable transparent and accurate reporting on timelines for all steps in the process, and analysis of delays.	Consistent with views expressed by the EIA Review's Stakeholder Reference Group and industry feedback.	Publish target timelines in revised Administrative Procedures by March 2009.
13.	EPA	Commenced. Consultant contracted.	Implement new EPA project management system to enable more effective management of the assessment process workload. Anticipated proponents will access to on-line project status information. Potential for integration with a) across-government project tracking system, and b) common use spatial data management system.	Consistent with views expressed by the EIA Reference Group.	Commencement of new project management system by November 2009.

	AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
14.	EPA	Commenced. Phased in over 2009.	Implement risk-based approach to assessment process. New approach will increase transparency of decision-making criteria, rigour, consistency, and certainty. New approach will be reflected in revised Administrative Procedures.	Consistent with views expressed by the EIA Reference Group.	Publishing of administrative procedures outlining risk-based approach by March 2009.
15.	EPA	Commenced. Draft paper prepared.	Implement outcome focused environmental conditions, rather than technical or prescriptive conditions. Conditions must be appropriate, enforceable and achieve best environmental outcomes in most efficient way.	Consistent with views expressed by the EIA Reference Group.	Implementation of new outcome based conditions based on operational procedures from March 2009
16.	EPA	Commenced. Dedicated staff expected in Dec 2008.	Implement backlog clearance strategy for 'post-EPA secondary' approvals – Environmental Management Programs and changes to proposals (s45Cs). The current backlog of secondary approvals is delaying implementation of approved projects. Priority issue for several state projects (egg Bluewater's, Gorgon).	Consistent with views expressed by the EIA Reference Group.	Reduce backlog of post EPA secondary approvals by 50% by second quarter of 2009.
17.	Minister	April 2009.	Investigate whether delegation of decision-making by Minister for changes to approvals (s46) to improve efficiency of administration and streamline decision-making	Consistent with Auditor General's review (2008) and Govt policy.	If agreed, delegation to be made by April 2009.
18.	EPA	Revised procedures drafted.	Develop revised administrative procedures to implement the results of the EIA review . Includes reduced number of levels of assessment, 'stop the clock' protocol, escalation procedure., timelines etc.	Consistent with the Auditor General (2008) and EIA reviews.	Gazette revised and administrative procedures by March 2009.

	AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
19.	DIA	Commenced.	Implement outcome focused heritage conditions, rather than process focussed. Conditions to be appropriate, enforceable and achieve best heritage protection outcomes in most efficient way.	Consistent with Keating and Auditor General Reviews.	Published administrative procedure that includes a schedule of outcome-based conditions by June 2009.
20.	DIA	Commenced.	Upgrade systems for tracking and reporting on timelines. This will enable transparent and consistent reporting on timelines for all AHA applications against stages in the process and improve capabilities for analysis of bottlenecks.	Consistent with Keating and Auditor General Reviews.	System developed and implemented and timeline, process and performance analysis reports. April 2009.

COORDINATION, REMOVE DUPLICATION, PARALLEL PROCESSES

AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
21. DEC	April 2009.	Investigate delegation by Minister for Environment to improve administrative efficiency in managing appeals, in particular appeals not relating to major proposals.	Appeals particularly for non-State developments but all proponents indirectly by more efficient use of Minister's time.	If agreed, delegation to be made by April 2009.
22. DEC	To be considered by Minister and if agreed, discussed with relevant Ministers. April 2009.	Integrating appeals and agency consultation into a single process. Currently, public authorities are consulted after the resolution of any appeals under Part IV of the EP Act. This effectively means there are two separate processes for considering issues raised by a proposal, which can add significantly to timeframes.	Approval timeframes have been a perceived pressure point for stakeholders. Has the potential to significantly reduce overall timeframe for Ministerial consultation and therefore overall approval timeframes.	If agreed, integrated process to be implemented by April 2009.
23. Minister for Environment	To be considered by Minister and if agreed, discussed with relevant Ministers.	Use of Cabinet where appropriate to reduce timeframes and ensure prompt response from relevant Ministers. Currently, other Ministers may take from several weeks to several months to advise the Minister of their concurrence with a proposed implementation decision.	All proposals that have been assessed by the EPA but particularly those where there are a significant number of decision making Ministers.	If agreed, Cabinet coordination to be implemented by April 2009.

	AGENCY	START DATE	INITIATIVE	NATURE OF SUPPORT	INDICATORS
24.	EPA	Commenced.	Revise EPA's procedures for nominating decision-making authorities (DMAs) – instead of 'catch-all' approach, limit to those where a premature decision could compromise environmental outcomes.	This issue has been consistently raised by industry and state government agencies. Consistent with the Auditor General (2008) and EIA reviews.	Publish an Environmental Protection Bulletin to a) provide guidance on defining a proposal, and b) clarify the restrictions on other public authorities, including DMAs and proponents.
25.	EPA/ DOIR	Commenced. Working group established.	Revise the current MoU between EPA and DoIR, to include a risk based approach to determine those activities that need to be referred to the EPA and ensure the working arrangements are efficient, effective and consistent with broader reforms.	Consistent with the Auditor General (2008) and EIA reviews.	Publish a revised MoU by July 2009.
26.	EPA/DPI	Commenced. Working group established.	Revise the current MoUs between EPA and DPI and agree on one overarching MoU, to include a) referral and assessment of schemes, b) strategic and structural plans, and c) pre-1996 urban zoned land.	Consistent with the Auditor General (2008) and EIA reviews.	Publish a revised MoU by December 2009.
27.	DMP	Commenced.	Review mining tenement conditions imposed by the Mining Act 1978 for conservation reserves and other DEC managed lands, to address outdated tenement conditions. Seek to reduce the number of conditions from 80 to less than 10 and reduce duplication between DEC and DMP.	Keating Review – Reduce duplication of process.	April 2009.