

# Environmental Law E-newsletter

October 2010

## Mining Environmental Bonds Review

The current rate of Environmental Bonds is under review, with the mining industry expecting an increase in the rate in early 2011, ending the current moratorium on bond rate increases.

Environmental Bonds are a form of security contemplated by the *Mining Act 1978* (WA) to ensure compliance with conditions imposed in relation to rehabilitation requirements of prospecting licences, exploration licences and mining leases.

Environmental Bonds have traditionally been calculated taking into consideration the estimated cost of rehabilitation of a mine and do not necessarily reflect the actual cost of rehabilitation. Case in point, mining securities in Western Australia are generally set by the Department of Mining and Petroleum (DMP) at 25% of the estimated cost of rehabilitation.

In 2006, WA's Environmental Performance Bond regime was reviewed by industry, government and community representatives, who identified that the level of mining security in WA was much lower than that in the eastern states (securities set at approximately 40-50% of the estimated cost of rehabilitation).

Despite pressure to amend the bond rates at the time, in mid-2008, a moratorium on bond rate increases was enacted to assist miners in dealing with the impacts of the Global Financial Crisis (GFC). That moratorium was extended in 2009 and is now due to expire in 2010.

The DMP have now formed a task force to review the level of mining securities and to make recommendations for the amendment of the environmental bond process.

DMP Environment Director, Phil Gorey, has publicly stated that the moratorium was a temporary measure and that higher bond rates were inevitable post GFC to more accurately reflect public expectations on mine site closure and rehabilitation. He further noted that a key consideration in setting a higher bond rate is that any change will not unnecessarily constrain development in the sector.

Despite these assurances, the mining industry is predicting that bond rates will be brought in line with the rates imposed in the eastern states, significantly higher than the rates WA miners are currently experiencing.

The new bond policy is scheduled to be released before the end of the year. It is our recommendation that the resources sector anticipates the inevitable changes to the imposed rate and provides the appropriate comment during the consultation stage. If you have any queries in relation to the environmental bond process please contact:

Paul McQueen, Partner, on (08) 9288 6943 /  
[paul.mcqueen@lavanlegal.com.au](mailto:paul.mcqueen@lavanlegal.com.au) or  
Clare Gleeson, Solicitor, on (08) 9288 9782 /  
[clare.gleeson@lavanlegal.com.au](mailto:clare.gleeson@lavanlegal.com.au).

For further information please contact:



**Paul McQueen**  
Partner  
Planning, Environment and Land Compensation  
Tel +61 8 9288 6943  
[paul.mcqueen@lavanlegal.com.au](mailto:paul.mcqueen@lavanlegal.com.au)



**Craig Wallace**  
Senior Associate  
Planning, Environment and Land Compensation  
Tel +61 8 9288 6828  
[craig.wallace@lavanlegal.com.au](mailto:craig.wallace@lavanlegal.com.au)



**Brian McMurdo**  
Consultant  
Planning, Environment and Land Compensation  
Tel +61 8 9288 6893  
[brian.mcmurdo@lavanlegal.com.au](mailto:brian.mcmurdo@lavanlegal.com.au)



**Rebecca Somerford**  
Solicitor  
Planning, Environment and Land Compensation  
Tel +61 8 9288 6820  
[rebecca.somerford@lavanlegal.com.au](mailto:rebecca.somerford@lavanlegal.com.au)



**Clare Gleeson**  
Solicitor  
Planning, Environment and Land Compensation  
Tel +61 8 9288 6782  
[clare.gleeson@lavanlegal.com.au](mailto:clare.gleeson@lavanlegal.com.au)