

Department of Mines, Industry Regulation and Safety
By email: RTD.Consultation@dmirs.wa.gov.au

17 November 2023

Dear Department of Mines, Industry Regulation and Safety,

RE: Proposed Fee for Objections under the *Mining Act 1978*

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide feedback on the Department's consultation on its proposed Fee for Objections under the *Mining Act 1978* (WA).

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Several of our members own and manage land for conservation in Western Australia in service of the public (environmental) interest.

Please note that ALCA is happy for this submission to be published in full.

Mining and protected areas for biodiversity

ALCA recognises the ongoing importance of mining to the economic prosperity of Western Australia, and the importance of balancing these interests with areas otherwise protected for the conservation of our unique biodiversity. The Independent Review of the NSW Biodiversity Conservation Act – chaired by former Treasury Secretary Ken Henry and published in August 2023 – emphasises the importance of elevating the environment in government policy. In particular, the report notes:

“As has been recognised in many global forums over the past few years, the natural environment is now so damaged that we must commit to ‘nature positive’ if we are to have any confidence that future generations will have the opportunity to be as well off as we are.”

There can be no doubt that there is a critical need – and opportunity – to elevate the importance of addressing the nature crisis when managing mining interests and activities in Western Australia.

When ALCA member organisations lodge objections, it facilitates a process for mining companies to understand our concerns more fully and also to facilitate action – often simple and reasonable action – to avoid unnecessary habitat loss or other unnecessary negative impacts upon biodiversity. Without a reasonably accessible objection process, public (environmental) interests can often be expected to be either unknown to applicants, or unheeded.

For clarity, it is worth noting that there is no distinction at law between an environmental interest and the public interest within the context of objections under the *Mining Act 1978* (WA). As per *A.C.N. 629 923 753 Pty Ltd v Leanne Margaret Corker & Ors* [2023] WAMW 1 [53], Warden Cleary found:

“Having regard to *Re Warden Heaney; Ex Parte Serpentine-Jarrahdale Ratepayers and Residents Association (Inc)*, environmental concerns are in the public interest, and therefore environmental and public interest objections are not separate categories of objection.”

Collectively, ALCA’s members operating in Western Australia raise many dozens of objections each year in the public interest to avoid either unnecessary or disproportionate negative impacts upon biodiversity within their nature reserves and sanctuaries.

Levying such an overwhelmingly substantial objection fee (\$859) compared to the only other jurisdiction to levy such a fee (Tasmania, at approximately \$50), will create a chilling effect upon the pursuit of the public interest by ALCA members, as well as by community groups and ordinary private (i.e. ‘non-mining’) citizens.

Recommendations

ALCA thus recommends the following:

1. Given the obstruction to the pursuit of the public interest that the proposed levy would create, the Western Australian Government should not introduce a Fee for Objections under the *Mining Act 1978* (by way of *Mining Regulations 1981*).

However, should the Western Australian Government nevertheless proceed with a fee:

2. That a Fee for Objections of no more than \$100 be applied to all objections under the *Mining Regulations 1981* – sufficiently high so as to dissuade vexatious objections, but not so high as to overwhelmingly thwart the pursuit of the public interest.
3. That the following categories be exempt from the Fee for Objections:
 - a. not-for-profit organisations, including licenced charities in Western Australia and charities registered with the Australian Charities and Not-for-profits Commission (ACNC), and community organisations; and
 - b. non-mining individuals.
4. That in any case, any Fee for Objections only become payable if and when the substantive matter proceeds to a decision. This is especially important given that tenement applications are frequently withdrawn prior to a final decision, and fresh applications over the same areas can be lodged at a later date, requiring a new objection – and thus new fee. The pursuit of the public interest should not be subjected to these vagaries of a private application.

Further context: the accelerating nature crisis

Whilst Australia's nature crisis is less well-known than the parallel, interconnected, climate crisis, it is just as serious for our society and economy. According to the World Economic Forum:

"Humanity has already wiped out 83% of wild mammals and half of all plants and severely altered three-quarters of ice-free land and two-thirds of marine environments. One million species are at risk of extinction in the coming decades – a rate tens to hundreds of times higher than the average over the past 10 million years...."

*Human societies and economies rely on biodiversity in fundamental ways. ...over half the world's total GDP – is moderately or highly dependent on nature and its services."*¹

Using the same methodology, **approximately half of Australia's GDP has also been demonstrated as having a moderate to very high dependence on nature**².

The scale and devastation that the unfolding nature crisis will have upon our collective wellbeing will dwarf all but the very biggest issues facing our nation and will rival them in importance. As per the British Government's Dasgupta Review:

*"We are facing a global crisis. We are totally dependent upon the natural world. It supplies us with every oxygen-laden breath we take and every mouthful of food we eat. But we are currently damaging it so profoundly that many of its natural systems are now on the verge of breakdown."*³

Indeed, in 2021, scientists confirmed Australia's trajectory towards the collapse of ecosystems⁴ and we have seen the largest documented decline of biodiversity than any other continent in the world⁵. The 2021 State of the Environment Report (released in July 2022) further confirmed that climate change was but one of several key pressures causing the accelerating decline of our environment:

"Overall, the state and trend of the environment of Australia are poor and deteriorating as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction. Changing environmental conditions mean that many species and ecosystems are increasingly threatened. Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years..."

*Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which are reducing the environmental capital on which current and future economies depend. Social, environmental and economic impacts are already apparent."*⁶

¹ See: World Economic Forum, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, January 2020; <https://www.weforum.org/reports/the-global-risks-report-2020>

² See: Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, September 2022; <https://www.acf.org.au/how-australias-prosperity-depends-on-nature>

³ See: p1, Dasgupta, P. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, Government of the United Kingdom; <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

⁴ See: Bergstrom et. al, 'Combating ecosystem collapse from the tropics to the Antarctic', *Global Change Biology*, 2021; <https://onlinelibrary.wiley.com/doi/10.1111/gcb.15539>

⁵ See: DCCEEW; <https://www.dcceew.gov.au/environment/biodiversity/conservation>

⁶ See: <https://soe.dcceew.gov.au/overview/key-findings>

As underlined by the 2021 State of Environment Report, habitat loss and resource extraction – driven by land use change – are serious concerns for the ongoing viability of Australia’s biodiversity. Repeated adverse decisions on habitat and native vegetation clearance may appear reasonable on marginal analysis, but this fails to capture the State of Environment Report’s conclusion that Australia’s nature is suffering badly from cumulative impacts, and to our great social, environmental, and economic peril.

Thank you again for the opportunity to provide feedback to the Department’s consultation on its proposed Fee for Objection under the *Mining Act 1978* (WA).

ALCA and its members look forward to continuing to engage with the Department to ensure the adoption of an equitable process in the public interest.

Australian Land Conservation Alliance