



Response to submissions

Eligible Mining Activity Framework

The Department of Mines, Industry Regulation and Safety (DMIRS) has released a discussion paper on the proposed Eligible Mining Activity (EMA) Framework under the *Mining Amendment Act 2022*. The EMA Framework is a new form of authorisation for certain minimal disturbance activities, referred to as eligible mining activities. Under the EMA Framework, mining tenement holders will be able to receive automatic authorisation to undertake certain eligible activities by serving an EMA Notice to DMIRS.

The discussion paper provided proposed criteria for what may constitute an eligible activity under the framework, as well as proposed standard conditions to apply to these activities, for stakeholder consideration and feedback.

Submissions received will inform the drafting of amendments to the Mining Regulations to establish the framework. Once drafted, amendments to the Mining Regulations will be subject to further consultation and there will be further opportunity for stakeholders to provide feedback.

Stakeholder comments

The EMA Framework Discussion Paper was released on the DMIRS website for public comment from 8 December 2022 to 10 March 2023, with eight stakeholders providing feedback.

The review process notified respondents that their submissions would be made publicly available on the DMIRS website. For the purposes grouping and responding to feedback from stakeholders more efficiently, the submissions have been arranged by theme. The text of submissions are included verbatim.

Key themes of feedback received

The key themes of this feedback were related to:

- Nature of activities to be considered EMAs
- Scale of activities to be considered EMAs
- Areas to be excluded from the EMA framework
- Proposed standard conditions to apply to an EMA notice
- Timeframe for rehabilitation of activities undertaken under an EMA notice
- Duration of an EMA notice
- EMA notices of completion
- Regulation of activities undertaken under an EMA notice

A detailed response to these matters is provided in the below Response to Submissions.

DMIRS thanks all stakeholders for their considered input into the process.

Ref #	Stakeholder	Comment	DMIRS Response
General and administrative			
1.	Association of Mining and Exploration Companies (AMEC)	<p>AMEC appreciates the opportunity to provide industry consultation on the discussion paper for the Eligible Mining Activity (EMA) Framework produced by the Department of Mines, Industry Regulation and Safety. AMEC has been a long-standing advocate for this change which is consistent with regulatory best practice and risk-based regulation approach.</p> <p>As stated AMEC is a long-standing advocate for this legislative change, which should incorporate a risk-based regulation approach. AMEC supports the intent of the discussion paper and of the proposed implementation of risk-based assessment and compliance processes. The EMA Framework should help alleviate certain regulatory burdens, shifting to a compliance based form of regulation.</p>	DMIRS thanks AMEC for its submission and notes its support of the EMA framework. Please see responses to specific comments in the relevant sections below.
2.	Amalgamated Prospectors and Leaseholders Association (APLA)	<p>APLA appreciates the opportunity to provide a submission for the Eligible Mining Activity Framework as requested by the Department of Mines, Industry Regulation and Safety. APLA has over 2,000 members and many members are full-time prospectors, holding tenements throughout Western Australia. The Eligible Mining Activity Framework has a direct impact on the activities of these prospectors.</p>	DMIRS thanks APLA for its submission. Please see responses to specific comments in the relevant sections below.
3.	Cement Concrete & Aggregates Australia (CCAA)	<p>Cement Concrete & Aggregates Australia (CCAA) welcomes the opportunity to provide comments to the Department of Mines, Industry Regulation and Safety (DMIRS) on the Discussion Paper – Eligible Mining Activity Framework.</p> <p>CCAA is the peak industry body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries. Our members operate cement distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations throughout Western Australia. For your information, a list of CCAA members in Western Australia is provided in Appendix 1.</p> <p>CCAA supports the concept of a streamlined approval process for low impact exploration in non-sensitive environmental areas to proceed by notification and provides the following more detailed comments to improve clarity for this important reform.</p>	DMIRS thanks CCAA for its submission and notes its support of the concept of the EMA framework. Please see responses to specific comments in the relevant sections below.
4.	Conservation Council of Western Australia (CCWA)	<p>The draft EMA framework proposes to apply an automated process, without the requirement for a formal environmental review, licencing, or public consultation.</p> <p>It is CCWA's experience that without strong mechanisms for (both regulatory and public) review of proponent environmental plans, important environmental controls and social viewpoints can be overlooked. These review mechanisms can also provide validation for projects and assist in identifying contentious issues at an early stage. For public consultative process, the connection with local context becomes a critical feature in environmental review, and enables the negotiation of the technical and scientific elements of a proposal, while advancing ethical perspectives and producing more socially acceptable outcomes.</p> <p>CCWA does not support an automated EMA framework to apply to mining proposals, even for those considered 'minimal disturbance activities', and asserts that regulatory and consultative mechanisms be retained and/or extended to provide the best environmental and social outcomes.</p>	<p>DMIRS thanks CCWA for its submission.</p> <p>The introduction of the EMA framework will strengthen environmental regulation under the Mining Act and help to modernise and implement a risk-based, outcomes-focused approach to mining in Western Australia.</p> <p>The EMA framework acknowledges the diversity of the mining sector in Western Australia and introduces a tiered approach to the environmental assessment of mining operations. It does this specifically by acknowledging that certain minimal disturbance mining activities located outside of sensitive environmental areas can be progressed through an automated authorisation pathway.</p> <p>The EMA framework will be developed to ensure full information capture, whilst still occurring within a robust regulatory framework.</p> <p>Currently, the EMA framework would be limited to exploration and prospecting activities. Should the EMA framework be extended to include mining activities in the future, eligible mining activities will still be limited to those that are able to be carried out with minimal disturbance to the land, and must fit within the prescribed criteria of what constitutes an eligible mining activity. Further consultation would occur should DMIRS look to include minimal disturbance mining activities in the EMA framework.</p>

Ref #	Stakeholder	Comment	DMIRS Response
5.	Chamber of Minerals and Energy (CME)	<p>CME members are major users of the <i>Mining Act 1978 (WA)</i>, Mining Regulations 1981 and associated guidance documents. As a result, the efficient operation of the WA mining regulatory framework important to our membership and their ongoing operations and international competitiveness.</p> <p>The introduction of the concept of Eligible Mining Activities (EMA), originally proposed as low impact notifications in the then Streamlining (Mining Amendment) Bill 2021, has been generally welcomed by industry. However, this support continues to be contingent on the implementation of the framework meeting industry expectations on the delivery of streamlining benefits. For example, the implementation of an EMA framework should enable the Department of Mines, Industry Regulation and Safety (DMIRS) to reallocate resources to the assessment of higher risk, more complex applications which require additional attention to process within the committed timeframes.</p> <p>The release of the draft EMA framework is an important step, and we welcome the Departments engagement in consultation prior to development of draft regulations. However, in its current format, it is unclear to what extent the Framework will deliver on the intended efficiencies. As a result, the limited scope of the framework and the restrictions proposed to its application appears unlikely to deliver on the potential streamlining efficiencies for either proponents or the Department. It is industry's assessment that this will limit potential for use of EMAs and stymie the potential for much needed improvements to the processing and assessment of low impact exploration activities.</p> <p>As a result, CME recommend the Department further engage with industry to develop a Framework which is able to be applied to all low-impact activities and delivers on the regulatory streamlining intent of the enabling legislation.</p>	<p>DMIRS thanks CME for its submission.</p> <p>DMIRS is committed to ensuring the EMA Framework is workable and achieves the intended benefits for industry, Government and the wider community.</p> <p>Once drafted, amendments to the Mining Regulations will be subject to further consultation, and there will be further opportunities to engage on the details of the EMA Framework.</p>
6.	CME	<p>CME understands the creation and implementation of EMA's will require updates and amendments to the current ICT systems to allow for submission and automated approval. Given this, CME and our members strongly urge the Department to take this opportunity to progress additional aligned system improvements. Where practical, the automation of processes, improved availability of GIS layers, and more intuitive user interfaces will reduce the ongoing administrative burden for both DMIRS and proponents and set the new EMA framework up to deliver on its potential. Aspects of the specific recommendations and issues identified in the attached Appendix outline some of the ongoing limitations presented by the current ICT system.</p> <p>CME recommends the progression of aligned system improvements in consultation with industry, to both improve the processing of EMA's and address existing limitations of spatial systems, applications and approvals.</p> <p>CME and our members stand ready to engage and support the Department through this process. As also outlined in our recent submission regarding draft Programme of Work and Rehabilitation guidance, we see significant potential for ICT improvements to deliver broader gains for both DMIRS and the resources sector in improving approval timeframes and processes.</p> <p>CME and our members welcome the opportunity to discuss the Framework directly with DMIRS and extend an ongoing invitation to host consultation briefings or roundtable discussions to enable the more detailed discussion required to inform improvements to the draft Framework.</p>	<p>Noted.</p> <p>Development of the Resources Online system (which will be utilised for submission of an EMA) will significantly expand, modernise and enhance the digital capability of mining and petroleum lodgements to DMIRS and will address a number of matters raised by CME. In developing the Resources Online system, consultation with industry will be undertaken and feedback sought.</p>

Ref #	Stakeholder	Comment	DMIRS Response
7.	The Environment Institute of Australia and New Zealand (EIANZ)	<p>The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to have this opportunity to provide feedback on the draft Programme of Work (PoW) Guidance, Exploration Rehabilitation Guidance and Eligible Mining Activity Framework Consultations.</p> <p>The Institute is the leading professional body in Australia and New Zealand for environmental practitioners and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.</p> <p>We forward this submission on behalf of the WA EIANZ members. The WA Division currently has approximately 200 members while the Institute has over 2,100 members across Australia and New Zealand in a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates and environmental impact specialists working in government, industry and the community.</p> <p>Again, we thank DMIRS for the opportunity to be engaged in feedback on this amendment.</p>	DMIRS thanks EIANZ for its submission. Please see responses to specific comments in the relevant sections below.
8.	Eastern Goldfields Prospectors Association (EGPA)	<p>EGPA welcome the opportunity to comment on DMIRS's new concept titled "Eligible Mining Activity Framework".</p> <p>Prior to the release of this draft it would have been much simpler to seek informal consultation from our sector to jointly come up with a fit for purpose draft for consideration to present to the wider public. EGPA are disappointed with the way this has been handled and implemented. To use an analogy, we have been presented with a vehicle that is not fit for the stated purpose – "for low risk and low impact activities".</p> <p>We believe the term EMA with specific reference to "mining" is poorly chosen and does not accurately reflect the low impact and low risk nature.</p> <p>Third parties with no experience or knowledge of the low impact nature of the activities could perceive this framework to be considered a higher impact than what is occurring or intended.</p> <p>EGPA strongly suggest that the alternate term be Eligible Exploration Activity – "EEA"</p> <p>EGPA strongly suggest DMIRS not prescribe rigid inflexible regulations on activities, otherwise this whole framework will not work. In short, the whole exercise will be a very expensive and waste of every body's time, the end result will be a lost and wasted opportunity to create efficiencies for industry and government.</p>	<p>DMIRS thanks EGPA for its submission.</p> <p>DMIRS is committed to ensuring the EMA Framework is workable and achieves the intended benefits for industry, Government and the wider community.</p> <p>The release of this discussion paper is the first step in developing the detail of the EMA framework. Once drafted, amendments to the Mining Regulations to establish the EMA framework will be subject to further consultation, and EGPA will therefore have further opportunity to engage on the details of the framework.</p> <p>Whilst the Department is restricting application of the EMA Framework to exploration and prospecting activities in the first instance, DMIRS will review it appropriateness with respect to mining activities at a later date. The name 'Eligible Mining Activity' reflects this position, and is defined in the <i>Mining Amendment Act 2022</i>.</p>

Ref #	Stakeholder	Comment	DMIRS Response
9.	Morgan Chapman	<p>I wish to make a submission about the draft EMA Paper and Framework</p> <p>This framework will not work for the professional prospector as it is currently proposed, In fact it will make it harder, more prescriptive and increase the regulatory burden on professional prospectors who have contributed to the wealth of this state and the nation</p> <p>To me this whole EMA paper put out by DMIRS can be summed up with Environmental science is a discipline that dispassionately reviews evidence, conducts appropriate investigations and experiments, and informs public policy accordingly. Environmentalism is a quasi-religious stance that begins with the conclusion that mining and exploration are bad, and attempts to stall its progress wherever possible.</p> <p>The new draft environmental guidelines for exploration rehabilitation and EMA draft framework exploration are littered with the dogma of environmentalism. The utterly impractical list of requirements to leave drill spoil/samples intact are just one example. Anybody with a modicum of intelligence can come up with dozens of "what ifs", to support the case for environmentalism, but nowhere is the case supported by scientific evidence or logical thinking. Practical realities in the field are ignored and "what feels right" to an environmentalist becomes the law. The tragedy for our state is that the dogmatic and illogical grip of environmentalism within DMIRS is not limited to the shortcoming of the draft environmental Rehabilitation guidelines for exploration and the draft EMA framework. It also behind illogical decisions regarding assessment of Programmes of Work, mine closure plans, mining approvals and how exploration is conducted on DEC managed lands and many other areas in the state.</p> <p>From reading the draft paper and its contents DMIRS clearly sees low risk activities and low impact exploration activities as being bad for the mining industry. If DMIRS did not see these activities as being bad for the state and mining industry, you would not see all the ridiculous draft illogical and some unworkable conditions suggested in the document. This is primarily all aimed at creatively imposing duplication measures, decreasing operator flexibility in the field and increasing regulatory burden to stifle responsible exploration in this state.</p> <p>In fact you would see practical logical conditions in the draft EMA framework released aimed at giving operational flexibility to prospectors and junior explorers to find the mines of tomorrow.</p> <p>DMIRS on the one hand is attempting to say this EMA framework will help the exploration and mining sector for genuine explorers, but in attempting to say that, as far as I can see want to hit all of us over the head with a sledge hammer of "environmentalism" referred to above with my definition and creatively put many of us out of work.</p> <p>DMIRS needs to take note that If this draft EMA Framework is not actually aimed and tailored at helping all professional prospectors and explorers as it should be, making it easier to do business in line with the government's commitment then this whole EMA framework has been constructed in a manner which I would view as being to like a snake oil salesman. The bluntness of this comment is not aimed at being disrespectful but to bring home the message. Please start by the notion that exploration and mining are good for this state and we need to encourage further exploration and not discourage it with all the "what feels right" inflexible and not realistic expectations and conditions.</p>	<p>DMIRS thanks Mr Chapman for the submission.</p> <p>The EMA framework acknowledges the importance and diversity of exploration and prospecting activities in Western Australia and introduces a tiered approach to the environmental assessment of these activities.</p> <p>It does this specifically by acknowledging that certain minimal disturbance activities located outside of sensitive environmental areas can be progressed through an automated authorisation pathway. The introduction of this automated pathway is intended to benefit prospectors and explorers by removing the current time period for an application to await and undergo assessment, thereby enabling a faster approvals process for eligible activities.</p> <p>Given that eligible activities will not be subject to formal environmental assessment by an Environmental Officer it is imperative that appropriate criteria of what constitutes an eligible activity are established and appropriate standard conditions are developed, in order to mitigate risk to the environment. DMIRS will review any criteria and conditions set over time as it evaluates the effectiveness of the EMA framework.</p> <p>The introduction of the EMA framework does not preclude tenement holders from continuing to use the existing Programme of Work framework if preferred.</p> <p>Further consultation on the draft criteria will be undertaken on the draft Mining Regulations which will establish the framework for EMA.</p>

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		<p>The authors of this document clearly want to ignore practical realities in the field which have for many years shown responsible good rehabilitation practices and come up with “what feels right” with the current draft EMA framework to support all the lunatics who see mining as being bad and terrible in the state of WA. Many of these people have no real understanding of responsible exploration activities and practices.</p> <p>I have attached copies of some submissions lodged a long time ago with photographs as evidence. Importantly these photographs still have applicability even today for this EMA framework especially for drilling as some DMIRS officers (not all) see the whole notion of drilling and drill spoil/samples as being terrible for the state of WA.</p> <p>I would urge all the DMIRs environmental officers to read and look at these old submissions with photographs as evidence instead of coming up with all the “what feels right” type eligible activities and conditions for the EMA framework.</p> <p>In closing the EMA framework needs to work for all prospectors and explorers to make it easier to do business for responsible exploration to continue, not make it harder, create more levels of regulatory burden and introduce more duplication to put people out of work.</p>	
Nature of activities			
10.	APLA	Dryblowing of existing stockpiles or new stockpiles should be included as this activity directly impacts on how the site will be rehabilitated.	Comment noted and will be taken into consideration when drafting regulations for what may constitute an EMA. Once drafted, EMA regulations will be subject to further consultation.
11.	CCWA	<p>CCWA does not view these kinds of activities as ‘minimal disturbance activities’. Accordingly, CCWA highlights the inadequacy of the current description of ‘minimal disturbance activities’ and further notes the shortcomings of the decreased regulatory framework to be applied to EMAs.</p> <p>In addition to the requirement for a more appropriate description of ‘minimal disturbance activities’, CCWA seeks further detail on who decides that an activity meets the specified criteria for minimal disturbance activities. CCWA maintains that these critical decisions require careful regulatory overview and broader public review.</p> <p>Furthermore, a ‘one-size-fits-all’ approach is not appropriate – each proposal should require detailed assessment of context-specific environmental and social parameters, and of the complex risks involved.</p> <p>CCWA asserts that fast-tracked, automated and/or proponent led self-regulation processes, as proposed under the EMA framework, cannot provide the necessary safeguards to protect the environment.</p>	<p>For the purpose of the <i>Mining Amendment Act 2022</i>, an EMA is taken to be carried out with minimal disturbance to the surface of the land if it is carried out in accordance with prescribed requirements.</p> <p>The draft prescribed requirements presented in the discussion paper are based on the nature, scale and location of activities. To be considered an eligible mining activity, proposed activities must meet all criteria and be operated in accordance with prescribed conditions.</p> <p>With respect to who decides that an activity meets the prescribed criteria, EMA Notices will lodged through the future Resources Online system. The lodgement process will prompt applicants to provide detailed information on the types of activities, location of proposed activities, and scale of disturbance. If an application complies with all of the specified EMA criteria the system will allow the applicant to serve the EMA Notice to DMIRS. The applicant will then be able to undertake the activities in accordance with the EMA Notice and prescribed conditions.</p>

Ref #	Stakeholder	Comment	DMIRS Response
12.	CME	<p>The list of exploration activities that will be considered for EMAs is limited. CME recommends the list of activities eligible for EMAs be updated to also include a catch-all for 'early exploration activities and maintenance activities related to early exploration activity', in addition to the existing activities listed. This would allow the EMA Framework to capture the preparatory work often required ahead of activities like drilling.</p> <ul style="list-style-type: none"> • Specific activities that may fall within 'early exploration activities' would include: • Driving vehicles not on existing roads or tracks • Auger drilling • Soil sampling • Rock chip sampling • Surveys, including passive seismic, electromagnetic, magnetic geophysical, gravity and resistivity surveys • Test pits • Heritage and environmental surveying requiring track development • Surface water monitoring – pools etc • Clearing for pads and sumps <p>Further information is also required to understand the basis underpinning the classification of activities as eligible for EMAs. Recognising that this Framework was originally conceptualised to streamline approval of 'low-impact' activities, CME considers it would be useful for the Framework to outline the basis and threshold for classification under the new Framework. Understanding the core requirements for eligibility will assist in developing broad understanding of the new Framework and its interaction with other approval processes.</p> <p>Further guidance is also required to establish the proposed approach regarding access to areas of interest under an EMA framework.</p>	<p>In accordance with the <i>Mining Amendment Act 2022</i> an activity is considered to be an EMA if it:</p> <ul style="list-style-type: none"> • uses machinery to disturb the surface of the land for the purposes of, or in preparation for, mining; and • the activity can be carried out with minimal disturbance to the surface of the land. <p>The EMA criteria set out in the discussion paper attempts to address the above requirements by capturing minimal disturbance mining activities outside of environmentally sensitive areas.</p> <p>Noting the above definition of an EMA, it is expected that preparatory exploration work that can be undertaken with minimal disturbance will be included in the EMA framework. DMIRS notes however that several activities listed would not require an EMA notice to undertake the activity, due to the absence of mechanised equipment.</p> <p>With regards to access to areas of interest, serving an EMA notice will not negate a tenement holder's existing obligations to ensure they meet all other access requirements of the land to which the EMA notice applies (noting that the excluded area list will preclude areas of the state where consent is required for access).</p>
13.	CME	<p><i>Exclusion of radioactive and fibrous materials</i></p> <p>This exclusion is very broad and will impact large areas of Western Australia, such as the East Pilbara. CME and our members query the rationale for a blanket exclusion from this Framework and suggest an EMA could be validly granted if a proponent submits relevant documents at the point of application. It is expected that the system will interact with relevant GIS layers and prompt proponents regarding the need to submit any relevant documents.</p> <p>CME recommend consideration is given to the impact of exclusions from eligibility for specific areas, and whether these may restrict use of EMAs in circumstances where it may otherwise be logical for them to be used.</p>	<p>Comment noted and will be taken into consideration when drafting regulations for what may constitute an EMA.</p>
14.	EGPA	<p>If this indicated list is not flexible to allow for current low impact exploration and prospecting activities outside of environmentally sensitive areas the concept is useless as it serves no practical useful purpose. It would be far better to utilise the current programme of work (POW) template as it defines the well proven rehabilitation practices within the document. Importantly these practices would save repetition and duplication i.e. no need to write up new prescribed procedures to justify ones activities</p>	<p>The EMA framework is intended to serve as an alternate mode to seek authorisation for certain minimal disturbance activities, and will allow for minimal disturbance exploration and prospecting activities outside of sensitive areas.</p> <p>The rehabilitation requirements under the EMA framework will largely reflect the existing Programme of Work rehabilitation requirements. Notwithstanding this, the introduction of the EMA framework does not preclude an applicant from utilising the existing Programme of Work framework if they prefer.</p>

Ref #	Stakeholder	Comment	DMIRS Response
Scale of activities – size of activity area			
15.	AMEC	<p>The discussion paper outlines an area of no more than two hectares per EMA notice. AMEC argues that this area should be raised to a total of ten hectares. This is based off Schedule 1 Clause 2(2) of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (NVC Regulations) which establishes a precedent for the definition of “low impact of other mineral or petroleum activities”. This Clause enforces that it is an offence to clear native vegetation unless it is of a kind prescribed. It then provides a threshold of ten hectares per tenement per financial year.</p> <p>Currently, the 2 hectares of area allowed under an EMA notification includes any tracks that may be required to allow access to the tenement area. Including tracks as a part of the 2 hectares would quickly use all of that allotted area. For this reason we suggest 10 hectares is considered rather than 2 hectares.</p>	<p>Comment noted and will be considered when drafting regulations for what may constitute an EMA.</p> <p>DMIRS will review the ‘<i>size of activity area</i>’ criteria in conjunction with the ‘<i>number of EMAs at any one time</i>’ criteria in order to ensure the EMA framework achieves a balance between authorising minimal disturbance and creating the intended efficiencies, whilst ensuring the initial roll out of the framework has adequate oversight.</p> <p>Once drafted, amendments to the Mining Regulations will be subject to further consultation, and any criteria set will be reviewed over time as DMIRS evaluates the effectiveness of the EMA framework.</p>
16.	APLA	DMIRS has proposed a maximum activity area of 2 hectares whereas a POW permit already grants 2.0 hectares. APLA recommends to standardise the activity area to prevent any confusion.	
17.	CME	<p>The proposal for a 2-hectare activity area is likely to significantly impact the ability for proponents to use an EMA for many of the activities proposed. For example, the total disturbance associated with an average drill program would exceed 2 hectares when a pad, sumps, tracks, stockpiles and other miscellaneous disturbance is factored in. The same constraints would impact the use of EMAs for activities like geophysical exploration or seismic lines. The overall effect of this area restriction is therefore likely to be that the majority of proponents will continue to submit PoW applications for early exploration work.</p> <p>To benchmark the appropriateness of this area, CME recommends DMIRS assess a sample of existing PoWs to confirm how many would likely be able to use the proposed EMA framework.</p> <p>To make the Framework more accessible for the low-impact exploration activities included, CME recommends a cumulative area of 10 hectares, which can be scaled to a percentage of the tenement size for large tenements (over a certain number of hectares).</p>	
18.	EGPA	The scale of the activities for example “scraping and detecting”, (clearly recognised by DMIRS as low risk and low impact), needs to be revised to 10ha subject to “no more than 2 ha of ground open at any one time” with an emphasis on progressive rehabilitation as per current POW commitment. For all other activities there needs to be further informal consultation to make the framework workable for the industry. This framework needs to be tailored to ensure the intended users will actually benefit from it, otherwise this whole concept is a total waste of resources. Additionally, it defeats the “ongoing government commitment to reduce red tape and make it easier to do business in WA”.	
Scale of activities – excavations			
19.	APLA	Where an EMA Notice contains excavations, the Department proposes that the total surface area of all excavations within the notice cannot exceed 100m ² , which equates to 10metres by 10metres which is not practical. A simple costean will be 2metres wide by up to 20metres long, which means only 2 could be dug before a new EMA is required. APLA proposes a minimum 200m ² to allow for progressive exploration.	<p>DMIRS notes stakeholder feedback on the draft criteria for excavations, and will consider this feedback when drafting regulations for what may constitute an EMA.</p> <p>DMIRS may consider revising the excavation criteria to instead reference a “maximum area of excavations open at one time”, similar to the existing Programme of Work-Prospecting form which requires “no more than two hectares of ground open at any one time.”</p>
20.	CME	Aligned to the above, CME considers the restriction on excavations not exceeding a total 100m ² across the EMA area will make the use of EMAs for the intended purpose impractical. CME recommends the total excavation area be revised to a maximum of 1000m ² with no one excavation to exceed 100m ² individually.	<p>In developing the EMA criteria, the ‘<i>scale of activities</i>’ criteria needs to provide a balance between authorising minimal disturbance activities and creating the intended efficiencies, whilst ensuring the initial roll out of the EMA Framework has adequate oversight.</p> <p>Once drafted, amendments to the Mining Regulations will be subject to further consultation, and any criteria set will be reviewed over time as DMIRS evaluates the effectiveness of the EMA framework.</p>

Ref #	Stakeholder	Comment	DMIRS Response
Scale of activities - depth			
21.	APLA	When prospecting to determine the extent of a resource the depth becomes an integral part of the assessment process and to have a limit of 2 metres is not practical. APLA suggests a minimum of 4 metres is more acceptable and workable without the need of an assessment by Departmental officers. Considering that most prospecting and exploration activities are in the arid regions the likelihood of striking water close to the surface is remote.	<p>Comments on the depth criteria for EMAs are noted and will be considered when drafting regulations for what may constitute an EMA.</p> <p>DMIRS may consider revising the depth criteria in order to capture a broader range of prospecting and exploration activities.</p> <p>Once drafted, amendments to the Mining Regulations will be subject to further consultation, and any criteria set will be reviewed over time as DMIRS evaluates the effectiveness of the EMA framework.</p>
22.	CME	The restriction to 2 metres depth for excavations limits the usefulness of EMAs for some of the activities listed. CME recommends a depth to no more than 5 metres is more practical and does not present any significant detriment to the intent of the EMA.	
23.	EGPA	A strict 2m depth limitation may well be unduly restrictive in some instances and not allow for operational flexibility. We suggest to make any depth to be guidance and be approximate. To ensure activities do not present a risk to groundwater and the types of material being excavated do not represent unacceptable risk to the surrounding environment, we suggest introducing a commitment by the applicant to tick a box that that the ground water or types of material being excavated do not constitute a risk to the environment. For example, in the Eastern Goldfields the majority of the water table is below 30m, and most operators dig in the oxide zone which is environmentally safe and non-polluting.	
Scale of activities - number of EMA at any one time			
24.	APLA	APLA proposes DMIRS consider the issuance of up to 3 EMA Notices for a tenement to allow the tenement holder to operate in an ongoing and efficient manner. Once the area of the EMA Notice has been completed then a completion notice is forwarded to DMIRS. If 3 EMA Notices are in use and the tenement holder has closed 2 then the tenement holder should be able to apply for 2 new EMA Notices so that works are not interrupted.	<p>Comment noted and will be considered when drafting regulations for how many EMA notices may be active on a tenement at any one time.</p> <p>DMIRS will review the 'number of EMAs at any one time' criteria in conjunction with the 'size of activity' criteria in order to ensure the EMA framework achieves a balance between authorising minimal disturbance and creating the intended efficiencies, whilst ensuring the initial roll out of the framework has adequate oversight and progressive rehabilitation is prioritised.</p> <p>The EMA limit per tenement will be reviewed over time as DMIRS evaluates the effectiveness of the EMA Framework.</p>
25.	CME	Restricting proponents to a maximum of one EMA per tenement at any one time further limits the use of the EMA Framework as a functional option for proponents. The Framework is unclear as to the rationale for this limit, given there are clear restrictions on the scale of activities to ensure alignment with the intent to enable a streamlined process for low- impact exploration activities. This proposed limit would make it very difficult for larger tenements to utilise the Framework for the intended purpose.	
26.	EGPA	EGPA suggest that number of EMAs not be restricted, otherwise proponents do not have operational flexibility.	
Scale of activities – other comments			
27.	CCAA	Clarity is required around the depth of excavations being limited to 2 meters. It should clearly state that this excludes drilling. A drilling program of less than 2 meters depth does not make any basic raw material exploration sense and would not be cost effective or retrieve the necessary information required on the resource profile.	Comment noted. The regulations will clarify that depth criteria does not apply to drilling activities.

Ref #	Stakeholder	Comment	DMIRS Response
28.	CCAA	A definition/diagram of an activity area compared to the surface area of all excavations is required to provide clarity on these two important, but distinct aspects.	The 'size of activity' criteria sets the maximum area for all activities contained within an EMA notice, and includes the activity area associated with excavations.
29.	CCWA	CCWA supports the restriction on the size of an EMA and the careful assessment of cumulative activity.	Comment noted.
30.	CCWA	CCWA supports a restriction on the surface area and depth of excavations for EMAs. Nevertheless, CCWA believes that if these operations involve the clearing of native vegetation, involve disturbance of wildlife habitat, or impact surface waters or groundwater systems, the proposed activity should be formally assessed, and licence applications applied.	Comment noted. To be considered an eligible mining activity (and therefore eligible for automatic authorisation under the EMA framework), proposed activities must meet all EMA criteria, and be operated in accordance with prescribed conditions. DMIRS' considers that the proposed 'Excluded Areas' list and prescribed conditions will ensure potential impacts to these sensitive areas are appropriately managed.
31.	CME	CME also recommend the further definition of clearing in the activity area separate to the existing excavation area provision, and clarification regarding the inclusion of access tracks within the activity area and excavation areas.	The 'size of activity' criteria sets the maximum area for all activities contained within an EMA notice, and includes the activity area associated with excavations and tracks.
32.	CME	Further clarification is also sought regarding specific aspects of the area restrictions, including whether there will be the ability to separate out areas of disturbance via polygons to better characterise individual disturbance areas.	It is intended that there will be an ability for an EMA notice to be spatially split up on a tenement, provided it meets all criteria.
33.	EIANZ	Suggest clarifying whether the maximum size of activity refers to the areas disturbed, or the spatial area application polygon.	Noted. For clarity, maximum size of activity refers to the maximum footprint of activities authorised under the EMA.
34.	EIANZ	Suggest clarifying whether the EMA can or cannot be spatially split up on the one tenement, ensuring that collectively these areas do not exceed 2ha.	DMIRS confirms that the intention is that an EMA notice can be spatially split up on a tenement, provided it meets all criteria.
Location of activities			
35.	AMEC	The two areas stating "Within 50m of an area containing priority flora" and "Within 50m of areas containing threatened or priority fauna" should be changed to include "area known to contain priority flora" and "areas known to contain threatened or priority fauna". This is to ensure greater clarity as to the areas that are excluded from the EMA Framework.	Comment noted and will be considered when drafting the excluded areas regulations.
36.	AMEC	Regarding private land, if prior consent is given by the private land holder to the proponent there should be provisions for an EMA notice to be lodged over that private land.	Comment noted and will be considered when developing the IT system to support the EMA framework.
37.	AMEC	Further clarification of whether or not a tenement that overlaps a townsite could have an EMA. For example a buffer zone around a townsite, may provide a path forward.	DMIRS clarifies that tenements which intersect townsites may still be subject to an EMA notice, provided the EMA notice itself does not intersect the townsite boundary and/or buffer zone.
38.	AMEC	In regard to additional information required, based on the spatial location of the proposed activity, AMEC has a few areas of concern regarding areas covered by an EPA approval and ILUAs. The lodgement of EMA notices over ILUA land should follow the guidance being introduced by the incoming Aboriginal Cultural Heritage Act 2021, as most of WA is currently covered by an ILUA agreement. Second to this, Heritage Agreements are usually entered into later in the exploration timeline as companies move towards further development.	In developing the Resources Online system, which will support the lodgement of EMA notices, DMIRS will ensure any requirements relating to lodging an EMA notice within an ILUA area are consistent with requirements of the <i>Aboriginal Cultural Heritage Act 2021</i> .

Ref #	Stakeholder	Comment	DMIRS Response
39.	APLA	<p>The new ACH Act and proposed regulations will impact on the ability of the EMA Notice to progress activities that are not captured by the POW's or MDCP's. APLA seeks clarification on how DMIRS will assess EMA applications considering the requirements of the ACH Act. The EMA Notice procedure will be an on-line process to allow prospectors to commence work and continue as each EMA Notice expires and another is issued. Any interruption to this process could cause serious financial difficulties to prospectors as most work with very small, tight budget.</p> <p>DMIRS needs to support the mining industry by removing the need under the proposed Regulations of the new ACH Act where the DPLH are proposing that an "ACH Investigation" needs to be carried out at the time when a POW or any work programme is lodged. APLA strongly believes it is in the Aboriginals and State's interest to have all land that is deemed to be of heritage significance, formally recognised and entered onto the new Directory, to allow the continuity of works and flow of investment for the mining industry. This will possibly need State and Federal funding to identify and registered these heritage sites as it involves both State and Federal Acts.</p>	<p>DMIRS acknowledges that the <i>Aboriginal Cultural Heritage Act 2021</i> introduces new requirements for tenement holders wanting to undertake mining activities.</p> <p>All current or future obligations under Aboriginal Heritage legislation will continue to apply to tenement holders in Western Australia and authorisation for activities under an EMA Notice does not negate the requirement for tenement holder's to comply with any obligations under Aboriginal Heritage legislation.</p>
40.	CCAA	<p>CCAA suggests that it may not be easy for a proponent to fully understand the extent of all the different land tenures and environmental overlays that are listed as Excluded Areas. CCAA recommends that all these land tenures and overlays are available on the DMIRS GeoView.WA GIS web-based system to enable easy access and visibility for all stakeholders.</p>	<p>A spatial layer clearly identifying all excluded areas (including areas covered by an excluded area notice) will be made publically available.</p>
41.	CCAA	<p>CCAA notes that dieback risk zones are included within the excluded areas definition. In many parts of the southwest of WA, Dieback risk zones include enormous areas of land, including already disturbed pine plantations, farmland, etc. Further clarity needs to be provided by DMIRS on what classification of Dieback risk zones should be within the Excluded Areas, i.e., infested, uninterpretable, or both so that the EMA process is available over significant areas of southwest WA.</p>	<p>Comment noted and will be considered when drafting the excluded areas regulations.</p>
42.	CCAA	<p>CCAA suggests there will be a lack of clarity around the areas containing priority flora and threatened or priority fauna. Will vegetation and fauna studies have to be completed to check for these communities? If so, this removes many of the proposed benefits of the EMA streamlined approval process.</p> <p>It is uncertain how the '50 meters of areas containing threatened or priority fauna' will be applied in practice when this fauna can be highly mobile, especially birds.</p> <p>CCAA recommends that these two criteria are removed, with environmental values of proposed exploration sites adequately considered on a risk basis by the other 14 exclusion criteria.</p>	<p>Comment noted and will be considered when drafting the excluded areas regulations.</p>

Ref #	Stakeholder	Comment	DMIRS Response
43.	CCWA	<p>Additional exclusions to high-risk environmental activities should apply.</p> <p>CCWA supports the proposal for the EMA to exclude radioactive and fibrous materials. However, CCWA believes that further exclusions must apply, for example, for areas where there are expressions of surface waters (ephemeral, perennial or otherwise); areas of remnant vegetation; areas addressed in the DWER clearing principles; or state/EPBC Act listed protected ecological communities and/or species.</p> <p>CCWA argues that the automated process is inadequate to provide for a detailed assessment of the environmental significance of an area and the risks to environmental values.</p>	<p>Comment noted.</p> <p>DMIRS notes that the excluded area list is just one mechanism within the EMA framework used to determine what may be an EMA and minimise environmental impact. It should be considered in conjunction with the other proposed criteria (nature of activity and scale of activity), as well as the proposed standard conditions which will apply to each EMA notice.</p> <p>Where an area has not been captured by the excluded area list, tenement holders will still be required to comply with standard conditions requiring, amongst others things, the avoidance of significant vegetation and impacts to watercourses.</p> <p>Notwithstanding this, the Mining Amendment Act includes a provision which allows the Minister to exclude areas from being eligible for application and assessment through an EMA Notice by publishing a notice in the Government Gazette. It is envisioned these will be areas of environmental sensitivities that aren't captured in the prescribed excluded areas. Potential examples include areas with emerging environmental sensitivities that aren't captured initially. This will ensure there is flexibility to add additional excluded areas as required.</p>
44.	CCWA	<p>CCWA does not support the application of EMAs to 'any' existing mining tenement.</p> <p>As previously discussed, CCWA believes that environmental assessments should be on a case-by-case basis and context-driven. Automated environmental approval processes, which remove critical elements of assessment and that are not cognisant of local context, do not provide an adequate framework for assessing environmental risk or for providing legitimacy in decision-making.</p>	<p>For clarity, though the EMA framework will generally be applicable across the State whereby there is an existing mining tenement, the proposed EMA criteria (nature, scale and location of activities) will still apply to any proposed activities.</p> <p>This will ensure that only low risk activities outside of sensitive environmental areas are authorised under the EMA framework.</p> <p>There may be instances where whole tenements are covered by an excluded area, in which case an EMA notice could not be lodged on the tenement.</p>
45.	CME	<p>It is recognised that there are certain areas that are logical for exclusion from EMA's given the additional assessment required. However, CME is concerned some of the criteria for exclusion are broad and are therefore likely to capture large parts of the state. For example:</p> <ul style="list-style-type: none"> • Within 50m of an area containing priority flora • Within 50m of areas containing threatened or priority fauna • Dieback Risk Zones <p>Further information is required to establish the process for a proponent to confirm whether activities are within an area of priority flora or threatened or priority fauna. Further information is also required to provide sufficient guidance regarding Dieback Risk Zones and what is specifically intended to be captured by this exclusion given there are a range of zones across Western Australia (WA) with dieback risk designations. For example, the south-west land division is entirely covered by a dieback vulnerable zone classification.</p> <p>Other named exclusions are similarly broad and require clarification to establish their application. These include ILUA's, Miscellaneous Licences and areas under EPA assessment. Further guidance is also required for proponents to understand the additional information likely to be required should an EMA application intersect with each of these areas.</p> <p>The breadth of the areas covered by these exclusions are likely to compound the difficulty for proponents to make use of this Framework across WA. CME recommends DMIRS review proposed exclusions through a risk-based lens, and where an exclusion is considered appropriate provide further clarity for proponents regarding assessment and information required.</p>	<p>Comments relating to priority and threatened flora and fauna, and dieback risk zones are noted and will be considered when drafting the excluded areas regulations.</p> <p>With respect to ILUAs, Miscellaneous licences and areas under EPA assessment, DMIRS is not proposing to exclude these areas from the EMA Framework. There are however, certain statutory requirements that applicants need to meet prior to undertaking activities in these areas. DMIRS may therefore look to include a mechanism by which applicants can provide a declaration (with supporting documentation if required), that these requirements have been met. For example, for miscellaneous licences the applicant may need to provide a declaration that they have reviewed the licence's purpose and proposed activities are consistent with the licence's purpose. It is envisioned that this declaration will be made within the system prior to submitting the EMA notice.</p>

Ref #	Stakeholder	Comment	DMIRS Response
46.	CME	<p>It is understood that the Minister already has broad powers to exclude areas under the <i>Mining Act 1978</i>.</p> <p>CME considers the publication of guidance regarding relevant considerations for a Minister to exclude an area from the EMA Framework would be useful to enable an overall understanding of the use of the EMA Framework.</p> <p>Further information regarding the trigger for the Minister to consider an exclusion would also be helpful for proponents. For example, is it intended the Department will provide recommendations to the Department on areas for exclusion, or will this process be triggered by stakeholders raising concerns?</p>	<p>The Minister's existing powers to exempt areas from mining (under section 19 of the Mining Act) do not apply to areas subject to a mining tenement (and therefore cannot be relied on to exclude areas from the EMA framework).</p> <p>Excluded area notices apply only to EMAs and will ensure that Programme of Works and Mining Proposals can continue to be lodged over these areas.</p> <p>The <i>Mining Amendment Act 2022</i> provides that an excluded area notice can be given where the Minister is satisfied that it is not appropriate for an EMA notice to be given. It is envisioned these will be areas of environmental sensitivities that aren't captured in the prescribed excluded areas. Potential examples include areas with emerging environmental sensitivities that are not protected by the provisions of other legislation.</p>
Proposed standard condition – rehabilitation timeframe			
47.	AMEC	<p>It is AMEC's position that the 6 month time limit is too restrictive and can be impractical particularly noting that the duration of a Program of Work can now be extended to four years. AMEC recommends that the rehabilitation timeframe should be extended to at least 12 months.</p>	<p>DMIRS acknowledges stakeholder feedback that the rehabilitation timeframe for activities authorised under an EMA notice should be extended to 12 months.</p> <p>In view of this feedback, and in conjunction with reviewing the draft Programme of Work Exploration Rehabilitation Guidance DMIRS may consider extending rehabilitation timeframes to 12 months or developing an appropriately worded outcome based rehabilitation condition.</p>
48.	CME	<p>CME and our members strongly recommend DMIRS amend proposed standard condition eleven regarding the timeframe for rehabilitation from 6 months to 12 months. This better aligns to the requirements proponents have for reporting disturbances under the Mining Rehabilitation Fund (MRF). Current experience across industry continues to demonstrate that the 6-month timeframe is not realistic due to various challenges with obtaining equipment, accessing results, and seasonal conditions.</p> <p>CME and our members support the intent of progressive rehabilitation, while noting that the practical reality is often that specific areas are often required to stay open longer to allow rehabilitation to be completed, such as tracks. This very often extends beyond the 6-month timeframe due to weather and resourcing considerations.</p> <p>Extension to 12 months, alongside a suitably rigorous extension process requiring sufficient written justification, would deliver an approach which ensures environmental outcomes are achieved while minimising the burden of extensions on proponents and DMIRS.</p>	
49.	EGPA	<p>Timeframes of 6 months is insufficient and impractical, due to a wide range of circumstance such as remote area, adverse weather conditions, availability of equipment, machinery breakdowns/modern supply chain delays, assay result delays of 3 to 4 months, other external responsibilities, and other commitments. We suggest the time frame be a default time of 12 months. Further we suggest a can-do attitude (more flexible and be non-prescriptive), from DMIRS if further time is required. Presently if a time extension is required an unnecessary essay/explanation must be written on why one requires extra time. Procedures are already spelt out and defined in the POW for the management of rehabilitation, we suggest DMIRS adopt the same procedures to the POW to reduce duplication and possible confusion.</p>	

Ref #	Stakeholder	Comment	DMIRS Response
Proposed standard condition – blocking of rehabilitated tracks			
50.	APLA	APLA is not in favour of this action for several reasons. Wild fires: the pastoralist may need these tracks to access a wild fire and use the tracks as containment lines; Future exploration: With the advent of new technology these tracks could be reused for the purpose of exploration using both hand-held and vehicle mounted equipment; Grid lines: Minor tracks or offshoots could be rehabilitated but the main grid lines should be left open for future exploration and to assist the pastoralist when mustering occurs.	DMIRS acknowledges that tracks may be used to support further EMAs within the same locality, and it therefore won't always be practical to block access to tracks at the completion of an EMA. Given this, DMIRS will consider removing this condition as currently worded, noting that all ground disturbing activities undertaken pursuant to an EMA Notice (including tracks) will still be required to be rehabilitated within a prescribed timeframe. In developing the notice of completion template, DMIRS may look to include a mechanism by which tenement holders can indicate a track has been left open to support further activities in the area (noting that the track will need to be captured in a further EMA notice).
51.	EGPA	In regard to point 18 of DMIRS -Tracks should not be blocked as is counterproductive. If blocked, a user will create further unnecessary clearing simply to access the blocked area or track. We have made this point many times before to DMIRS and has been accepted. Please remove this reference or requirement. Access tracks will always be used in the near future to support further prospecting and exploration activities including monitoring of rehabilitation for the full term of tenure. Tracks are different to operational disturbances, (e.g., push and scrape, drill pads) and provide for continuing viability of the exploration sector. Economic circumstances/commodity prices continually change worldwide and as such access tracks facilitate orderly responsible future exploration using these old tracks which have not been blocked. Proponents should not have to apply to retain these valuable features.	
Proposed standard condition – other comments			
52.	AMEC	AMEC reiterates that it is imperative that any such proposed standard conditions are created with a risk-based approach to ensure robust and fit for purpose standards.	Comment noted and will be considered when drafting standard conditions.
53.	APLA	<i>"Significant vegetation such as large trees and dense patches of vegetation are to be avoided."</i> APLA is of the view that large trees, dead or alive, plus dense vegetation can be rehabilitated as required under a POW in certain circumstances. During the rehabilitation process the spreading of fallen trees is an integral part to reduce soil erosion and promote the germination of new growth. Without these types of barriers, seeds could be washed or blown away rendering the rehab surface like a moonscape. The above method has and is promoted by DMIRS as the best practice however, in very dense vegetated areas, it is not a good practice to respread all that vegetation over the cleared area as it could cover the entire area and stop sunlight from getting into the soil and stunt germination from any seeds that may be present there. When considering an alternative method, APLA requests DMIRS to consider before any backfilling is carried out, push all the cleared vegetation onto the floor of the work area, drive over any branches, roots etc that stand high so that they don't protrude through and above the finished ground level. Then rake the cleared, refilled area across the flow of rain water with suitably sized bucket teeth to leave reasonably deep furrows. These furrows are very effective in trapping any seeds that are blown across the raked area. The furrows also reduce the overland flow of rainwater and holds the water which in turn allows it to soak deep into the soil, giving a moisture supply for long periods of time after rainfall.	Comment noted and will be considered when drafting standard conditions.

Ref #	Stakeholder	Comment	DMIRS Response
54.	APLA	<p><i>"All rigs, vehicles, tools and equipment are to be cleaned to prevent the transporting of plant diseases or weed seeds into or between activity sites."</i></p> <p>APLA assessed this statement as an overkill due to the migration of livestock and feral animals, unauthorised site entry by persons not involved with the site activities, willy-willies or strong winds and localised flooding. All these activities have the potential to transport plant diseases and weed seeds and this condition should be removed. APLA notes one exception where machinery has been operating in an area that has been identified to the proponent by the affected pastoral leaseholder as containing notifiable declared weeds then any machinery movement must be preceded by a thorough clean.</p>	<p>Comment noted.</p> <p>Given that dieback risk areas are proposed to be excluded from the EMA framework, DMIRS will review whether this condition, as currently worded, is required.</p>
55.	APLA	<p><i>"All sample bags, rubbish and temporary infrastructure are to be removed from site at the completion of activities."</i></p> <p>APLA is of the opinion that with historic workings being revisited, the EMA Notice holder should be granted an allowance to scrape away any old timer's campsite and dispose the rubbish into a dedicated council refuse site. This would allow the restoration of virgin regrowth at a much faster rate, allowing for the EMA Notice holder to contour any undulating country to prevent erosion and promote early seed germination on completion of the activities. This allowance could be funded through the MRF monies.</p>	<p>Comment acknowledged, noting that rehabilitation of abandoned mine features is outside current scope of developing the EMA framework.</p> <p>Notwithstanding this, tenement holders are encouraged to report abandoned mine features to DMIRS (Report an abandoned mine (dmp.wa.gov.au)) which will assist DMIRS prioritise rehabilitation programs in line with the Abandoned Mines Policy.</p>
56.	CME	<p>Further guidance regarding the process for extensions under the Framework is also required, along with proposed processing timeframes for extension requests.</p>	<p>DMIRS is looking to standardise the submission of rehabilitation extension requests through the future Resources Online system. Further information on this process will be made available as the system is developed.</p>
57.	EGPA	<p><i>Significant vegetation such as large trees and dense patches of vegetation are to be avoided.</i></p> <p>If DMIRS leaves the terminology as is this would prevent anyone working anywhere there is vegetation, and this is already on an environmentally non sensitive area. EGPA suggest use term "avoided where possible".</p>	<p>The avoidance of significant vegetation is considered an important environmental management practice as these areas often play an important role in ecological communities. This condition is consistent with existing standard environmental management commitments included on Programme of Works.</p> <p>When drafting the prescribed condition, DMIRS will review and refine wording for clarity and enforceability.</p>
58.	EGPA	<p><i>All rigs, vehicles, tools and equipment are to be cleaned to prevent the transporting of plant diseases or weed seeds into or between activity sites.</i></p> <p>As the EMA application process already would prevent access to environmentally sensitive areas this clause is unnecessary. This proposed demand is near on completely unworkable and impossible to comply with and must be removed from this proposal for many reasons. The logical extension of this would exclude everybody including the landholders/pastoralists, native title holders claimants, representatives, rangers, environmental inspectors, DMIRS inspectors, tourists, bike riders, emergency services, firewood collectors, weekend prospectors, and everybody else.</p>	<p>Comment noted.</p> <p>Given that dieback risk areas are proposed to be excluded from the EMA framework, DMIRS will review whether this condition, as currently worded, is required.</p>
59.	EGPA	<p><i>No activities to be undertaken within a bed or bank of a watercourse and no impacts to riparian vegetation.</i></p> <p>This appears to be aimed at wetlands and wet areas, not dry drainage systems. If aimed at all of WA then it would mean near on all gold alluvial catchments areas, faults and shear zones and drainage systems will be not open to an EMA and would exclude all activities including drilling.</p>	<p>The intention of this condition is to ensure impacts to watercourses and riparian vegetation are managed appropriately.</p> <p>When drafting the prescribed condition, DMIRS will review and refine wording for clarity and enforceability.</p>

Ref #	Stakeholder	Comment	DMIRS Response
60.	EGPA	<p>Surface holes drilled for the purpose of exploration are plugged immediately after being drilled and securely plugged, backfilled and mounded to prevent subsidence within 6 months of being drilled.</p> <p>We suggest leave the rehabilitation to the tenement holders' discretion as long as it is done within the 12 months and should not be required immediately. We suggest Drill holes may plugged "or capped" beneath the mounding.</p>	<p>The immediate temporary plugging of drill holes is considered necessary to manage risks posed to fauna by open drill holes, and will therefore be prescribed as a standard condition.</p> <p>Notwithstanding this, once the drill hole has been temporarily plugged, timing of rehabilitation (provided it is within the prescribed timeframe) is to the tenement holder's discretion.</p>
61.	EGPA	<p>Drill samples are to be removed from the surface of land and either buried or removed from site and disposed of appropriately.</p> <p>Samples where practical should definitely not be discarded back down the drill hole, or into sumps or other excavations. Just looking at the cost alone of acquiring the samples let alone the value of this resource to present and future understanding of the overall geology. This may include but not restricted to lithology, geotechnical, regolith, engineering, metallurgical, hydrology, geochemical, etc.</p>	<p>Whilst it is recognised that drill samples can be a source of geological information, under the <i>Mining Amendment Act 2022</i>, EMAs are defined as activities which can be carried out with minimal disturbance to the surface of the land. Given this, it is not considered appropriate to leave samples at surface under the EMA framework.</p>
EMA duration			
62.	APLA	<p>APLA requests that EMA Notices have the same standing as a POW, which is 4 years unless cancelled or surrendered. This request is based on the availability of prospectors to access their respective tenements during the summer months and for the long-term health and safety of the prospector. Further, most prospectors operate in remote/ isolated areas and when a breakdown of machinery occurs there may not have the ability/availability to hire another machine and remote areas of operations may reduce availability to expertise to repair machines. The lack of locally sourced replacement parts and then, if not available, having to wait until the parts arrive will further cause delays.</p>	<p>DMIRS acknowledges stakeholder feedback regarding the duration of EMAs. DMIRS will review the validity term of EMAs in conjunction with other feedback on the criteria as the EMA regulations are developed, noting that this will be subject to further consultation.</p>
63.	CCAA	<p>CCAA suggests that a two-year period to commence activities under an EMA Notice is too short as it can take that long just to get a land access agreement signed and would create unnecessary recurring paperwork to continuously renew.</p>	
64.	CME	<p>Regarding the duration of the notices, CME recommends EMAs be valid for up to 4 years to align to ongoing exploration programme campaigns and enable the undertaking of work which supports other PoWs that are part of broader campaigns.</p>	
65.	EGPA	<p>EGPA suggest time period be 4 years on Prospecting Licences, 5 years on Exploration Licences, if the EMA notice passes the test of eligibility, then the time frame and restrictions should be considered totally irrelevant to allow for maximum operational flexibility and reduce unnecessary extra workload to the DMIRS staff and officers. This whole process is purportedly to free up the DMIRS staff. The suggested short term time frame and unnecessary conditions does the exact opposite.</p>	
Notice of completion			
66.	AMEC	<p>AMEC believes that there needs to be further clarification around the assessment process for the EMA notice of completion. Given that a company supplies the department with all the required information to show that the EMA has in fact been completed, how will it be dealt with? Will it simply be signed off and the company can apply for a new one or will the department conduct an additional layer of compliance?</p>	<p>It is DMIRS' intention that submission of a Notice of Completion to the Department, in the approved form, will constitute "giving notice to the Minister" for the purpose of the Mining Act. Applicants will not need to wait for DMIRS' assessment of the Notice of Completion prior to submitting a new EMA notice.</p> <p>Notwithstanding this, DMIRS will audit and undertake compliance checks of submitted Notices of Completion to ensure activities were conducted and rehabilitated in accordance with the EMA notice and standard conditions.</p>

Ref #	Stakeholder	Comment	DMIRS Response
67.	APLA	APLA suggest that a departmental notification would suffice, as stated under number of EMA's at any one time, as the completion notice must be received before a new EMA Notice is issued for the same tenement. By having to submit the completion notice to the Minister delays could occur, interrupting the flow of works.	It is DMIRS' intention that submission of a Notice of Completion to the Department, in the approved form, will constitute "giving notice to the Minister" for the purpose of the Mining Act. Applicants will not need to wait for DMIRS' assessment of the Notice of Completion prior to submitting a new EMA notice.
68.	APLA	Paragraph 3. "The Department proposes that notices of completion must be lodged within six months of undertaking activities." APLA believes this is incorrect and should read "within six months on completion of the activities."	DMIRS acknowledges this section should have referenced "within six months of completion of activities".
69.	CME	Clarification is required that the submission of the NOC acts as the trigger for eligibility to apply for a new EMA. It is CME's recommendation that this should be the case. CME also considers there is a need for a template NOC for proponents to use to satisfy this requirement, and templates for any supporting information which may be required. Confirmation of the process for final closure of an EMA is also required, including timeframes for confirmation of receipt from DMIRS.	It is DMIRS' intention that submission of a Notice of Completion to the Department, in the approved form, will constitute "giving notice to the Minister" for the purpose of the Mining Act. Applicants will not need to wait for DMIRS' assessment of the Notice of Completion prior to submitting a new EMA notice. Notwithstanding this, DMIRS will audit and undertake compliance checks of submitted Notices of Completion to ensure activities were conducted and rehabilitated in accordance with the EMA notice and standard conditions. DMIRS will develop a standard Notice of Completion template which meets the requirements set out in the Regulations.
70.	EGPA	"The Mining Regulations will specify the manner and timeframe in which the completion notice must be given" EGPA cannot agree to something such as "manner and time frame", when we have no precise detail (The Mining Regulations), that are yet to be formulated.	Once drafted, the Mining Regulations (which will set out the manner and timeframe in which the completion notice must be given) will be subject to further consultation.
71.	EGPA	EGPA suggest that notices of completion be lodged within six months of completion of activities to be consistent with DMIRS 11 . <i>All ground disturbing activities undertaken pursuant to an EMA Notice are to be rehabilitated within 6 months of completion of the activity, unless otherwise approved by the Department.</i>	DMIRS acknowledges this section should have referenced "within six months of completion of activities".
72.	EGPA	"EMA Notice holders will be required to provide a declaration confirming that they have undertaken activities in accordance with the EMA Notice and relevant conditions" Considering it is proposed one put in a notice of completion and possibly signed with ones email, care must be exercised not to create yet another onerous obligation, otherwise this declaration can be become highly cost and time prohibitive.	DMIRS will develop a standard Notice of Completion template which meets the requirements set out in the Regulations. It is envisioned the declaration referenced in this section will be in the form of a check box, similar to those in the existing Programme of Work – Prospecting application form.
73.	EGPA	"The Department would expect a notice of completion to include: <ul style="list-style-type: none"> • Details of activities undertaken • Tonnage disturbed (if applicable)" Again, DMIRS is attempting to create yet another onerous obligation, measuring tonnage disturbed in such a precise manner is ridiculous as the intent is low risk and low impact, so we don't need yet more additional reporting requirements. Keep it flexible and simple.	DMIRS will develop a standard Notice of Completion template which meets the requirements set out in the Regulations. The template will be designed to capture enough information for DMIRS to determine if activities were undertaken in accordance with the EMA Notice and prescribed conditions, without being overly onerous on applicants.

Ref #	Stakeholder	Comment	DMIRS Response
74.	EGPA	<p><i>"The Department would expect a notice of completion to include:</i></p> <ul style="list-style-type: none"> • Exact location of activities; • Details of rehabilitation works completed; and • Supporting photos demonstrating that rehabilitation works have been completed in accordance with standard conditions" <p>Again, DMIRS is attempting to create yet another onerous obligation, reporting exact location of activities, when DMIRS knows the activities are within the "activity area" applied for in such a precise manner is ridiculous as the intent is low risk and low impact, so we don't need yet more additional reporting requirements. Keep it flexible and simple.</p>	DMIRS will develop a standard Notice of Completion template which meets the requirements set out in the Regulations. The template will be designed to capture enough information for DMIRS to determine if activities were undertaken in accordance with the EMA Notice and prescribed conditions, without being overly onerous on applicants.
Regulation and compliance			
75.	CCWA	CCWA argues that compliance with the approval criteria also requires further review/consideration. How will regulators know whether the EMAs are being appropriately approved and that environmentally sensitive (but unassessed) locations are being taken into account, when the process is automated?	DMIRS will audit and undertake compliance checks of submitted Notices of Completion to ensure activities were conducted and rehabilitated in accordance with the EMA notice and standard conditions.
76.	CCWA	<p>The findings of the Office of the Auditor General's 'Performance Audit into Compliance with Mining Environmental Conditions' are pertinent to the proposed DMIRS compliance measures. The OAG found that:</p> <p><i>Despite growth in the mining sector, the entities [being DWER and DMIRS] 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.</i></p> <p>Furthermore, the OAG determined that both entities needed to improve their responses to non-compliance issues.</p> <p>CCWA believes that in the absence of compliance checks for the validity of an authorised EMA; without any clear guidance on the details of inspection and monitoring for an EMA; and with DMIRS compliance capacity lacking, crucial safeguards will continue to be downgraded or completely overlooked under the proposal for automated and, therefore, reduced regulatory inputs.</p> <p>Moreover, the OAG Performance Audit on Compliance with Mining Environmental Conditions highlighted:</p> <p><i>...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...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.</i></p> <p>The OAG concluded:</p> <p><i>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...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.</i></p> <p>Accordingly, CCWA seeks clarity on compliance management for the fast-tracked approval mechanisms proposed under an EMA.</p>	<p>DMIRS implements a risk-based compliance approach across the lifecycle of a resources operation, whereby the level of monitoring and surveillance is proportionate to the level of risk.</p> <p>DMIRS considers that with appropriate criteria in place, activities authorised under an EMA notice will be low risk and able to be managed via the imposition of standard conditions and DMIRS' existing compliance functions.</p> <p>Implementation of the EMA framework will help contribute to DMIRS addressing the Auditor General's recommendations. The EMA framework will enable DMIRS' resources to be utilised more efficiently by redirecting and reallocating resources to on-ground compliance activities of higher impact, higher risk activities in Western Australia.</p> <p>The authorisation under the EMA framework does not remove the requirement for applicants to operate in accordance with conditions and should applicants not meet these conditions, the tenement holder will be subject to enforcement actions and the tenement would be liable for forfeiture as per normal DMIRS enforcement actions.</p>

Ref #	Stakeholder	Comment	DMIRS Response
77.	CME	The introduction for the Framework indicates that amendments to the Mining Regulations will be progressed, while Section 7 states that the Department views the Mining Act and Amendment Act are appropriate. Clarification regarding any proposed amendments is required, with industry consultation an important element for any proposed Regulation amendments.	As established in the <i>Mining Amendment Act 2022</i> , the criteria for what constitutes an EMA, along with the standard conditions that will apply to EMAs need to be prescribed in the Mining Regulations in order to give effect to the EMA Framework. Section 7 of the discussion paper was intended to reiterate that existing compliance functions within the Mining Act are appropriate to ensure compliance with EMA notices.
78.	EGPA	EGPA concurs and the DMIRS do already have regulatory powers and requirements contained within the Mining Act to regulate the EMA framework and therefore it is totally unnecessary to propose new regulations. We currently have strict tenement conditions, proposed new conditions which have serious consequences of forfeiture and fines. In addition, the DMIRS has strong powers to direct one to modify operations and also to issue stop work orders to cease all operations. These are more than sufficient regulatory powers given the EMA is a low risk-low impact activity.	
Additional comments			
79.	AMEC	If the EMA Framework is successful, AMEC can foresee that a notification process may be appropriate for future activities broader than currently anticipated. This could reduce the administration burden of both the proponent and the regulator without diminishing Western Australia's robust environmental regulation or compliance framework.	Noted. DMIRS will conduct a review two years after the commencement of the EMA framework to establish its appropriateness with respect to mining activities.
80.	APLA	APLA seeks clarification to the following; Can a 3rd party apply for an EMA Notice by way of a written agreement between the primary tenement holder and the 3rd party?	Similar to the existing Programme of Work process, it is anticipated that where the applicant is not the tenement holder, confirmation will be sought from the applicant that they have tenement holder authorisation.
81.	APLA	<i>"Activities authorised under an EMA Notice cannot commence until excess tonnage is granted."</i> Under the <i>Mining Act 1978</i> , exploration licenses have a 1,000tonne limit and prospecting licenses have a 500tonne limit. As stated above, activities can't start until an excess tonnage has been granted. APLA is of the opinion that activities should be allowed to commence whilst the excess tonnage application is being assessed, on the condition that the original grant tonnage is not exceeded. Bearing in mind that the grant of the EMA Notice is conditional on not allowing more than 2.0 hectares to be open at any one time.	It is the tenement holder's responsibility to be aware of tonnage limits (and previous tonnage disturbed) on a tenement and whether excess tonnage is required to undertake activities authorised under an EMA notice. Tenement holders will be able to commence activities authorised under an EMA notice whilst waiting for excess tonnage approval, provided the tenement tonnage limits (1000 and 500 tonnes for exploration and prospecting licences respectively) are not exceeded. Once these limits are reached, tenement holders will need to pause activity until excess tonnage is granted.
82.	CCWA	In view of the above points, CCWA provides the following recommendations on the Eligible Mining Activity Framework Draft Discussion Paper: 1. The proposal for EMAs requires review to include improvements to the regulatory overview of environmental risk. Fast -tracked approval mechanisms, which reduce regulatory overview and community review, should not be supported for the proposed mining activities. 2. Public consultation should be a part of all mining application assessments, including for EMAs. 3. 'Minimal disturbance activities' require review to include a range of other high-risk practices and environmental risks. 4. Mining activities are inherently high risk and should all be assessed by an Environmental Officer on a case-by-case basis and according to the specific environmental context. 5. Additional exclusion activities and environmental locations/contexts should be included in EMAs. 6. Tighter regulation of monitoring and compliance activities for EMAs is required.	DMIRS notes CCWA's recommendations and has addressed these matters in detail throughout this response document.

Ref #	Stakeholder	Comment	DMIRS Response
83.	CME	CME strongly recommends the department consider outstanding system issues while undertaking the ICT system revision process necessary to enable EMAs. Further, CME recommends DMIRS utilise an ongoing user acceptance testing process to develop and test the required updates to the existing ICT system prior to launch.	DMIRS acknowledges feedback on its existing PoW spatial system and this will be considered as part of ongoing business improvement programs and development of the Resources Online system.
84.	CME	Access for proponents to the relevant spatial layers to check EMA eligibility prior to undertaking a submission must also be a critical part of ICT improvements. This access is critical for proponents to be aware if a part of a proposed EMA sits within an exclusion zone or an area that will require additional supporting information to be lodged.	Noted. A spatial layer clearly identifying all prescribed Excluded Areas will be made available for proponents prior to submitting an EMA notice. It is anticipated this spatial layer will provide live feedback and will alert applicants if an activity intersects with an excluded area.
85.	CME	Confirmation is also required from DMIRS regarding whether a proponent will be required to submit an EMA for a single solid polygon or whether multiple polygons will be able to be used to identify specific areas on a tenement where specific activities will be located (within the one allowed EMA).	It is intended that there will be an ability for an EMA notice to be spatially split up on a tenement, provided it meets all criteria.
86.	CME	Information regarding the process for submission and review of EMAs, including whether this will be required to be undertaken individually by an assessing officer, is also required to set clear process expectations. To deliver on the streamlining intent which underpinned the development of these provisions, it is desirable that the majority of applications do not require assessment by a DMIRS official and instead are approved with standard conditions. In circumstances where specific triggers may require review by an assessing officer, clear processes and timing must be outlined. To navigate this process proponents will also need to understand the preferred formats (for example through the provision of non-prescribed forms) for any additional documentation required. Outlining any specific requirements, and any preferred formatting, will assist proponents to deliver on DMIRS expectations where additional information is required.	EMA Notices will be lodged through the future Resources Online system. The lodgement system will prompt applicants to provide detailed information on the types of activities, location of proposed activities, and scale of disturbance. If an application complies with all of the specified EMA criteria the system will allow the applicant to serve the EMA Notice to DMIRS (without assessment by an Environmental Officer), and the applicant will be authorised to undertake activities in accordance with the EMA Notice and prescribed conditions. Where an application does not meet the EMA criteria it is intended that the spatial system will enable applicants to proceed with a spatial PoW for submission and assessment by an Environmental Officer via the existing PoW process. Guidance will be provided for applicants on navigating the system once the EMA framework is operational.
87.	CME	Clarification is required regarding whether an EMA can be surrendered if it has not been used. CME recommend this is included as a feature of the EMA Framework, as it will enable better oversight of where work is occurring in WA and the close out of 'ghost' approvals.	Where an EMA notice has not been used, tenement holders will be encouraged to submit a Notice of Completion, noting that no works were undertaken under the notice. This will have the effect of surrendering the notice and allowing further notices to be lodged on the tenement.
88.	CME	Clarification is also required regarding whether disturbances made under the EMA can be transferred to a third party (pastoralist, Traditional Owner or other stakeholder) if that party wishes to assume liability for that disturbance e.g., a track or bore.	As EMAs are intended to be temporary and low impact, it is not anticipated that activities authorised under an EMA notice will be appropriate for transferring to a third party.
89.	EGPA	In closing before DMIRS comes to any finalisation on this EMA Framework and draft regulations, EGPA requests extensive ongoing input to ensure that this process is simple painless and importantly be workable.	Once drafted, amendments to the Mining Regulation (which will give effect to the EMA framework) will be subject to further consultation, and any criteria set will be reviewed over time as DMIRS evaluates the effectiveness of the framework.
90.	EGPA	The concept of utilising artificial intelligence (AI) is welcomed on the assessment stage, however we see imminent failure from increased regulatory burden, as the AI is not utilised fully through the whole process to completion. DMIRS staff should focus its resources on high-risk activities and not be wasted on low risk- low impact activities.	By introducing an automated authorisation pathway for minimal disturbance activities outside of environmentally sensitive areas, the EMA framework will enable DMIRS to redirect its resources to assessment and on-ground compliance of higher impact and higher risk activities that occur in Western Australia.

Government of Western Australia

**Department of Mines, Industry Regulation
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8.30am – 4.30pm

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