



Department of **Energy, Mines,
Industry Regulation and Safety**

Response to submissions

Review of Standard Conditions for Mining Tenements

December 2024



Contents

Introduction	3
Consultation	3
Key themes	4
1. Conditions to endorsements	4
2. Pastoral leases	4
Responses to submissions	6

Introduction

The Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) applies standard conditions to mining tenements both on grant and following Ministerial consent being granted for access to protected lands. These conditions provide a consistent approach to the regulation of activities on mining tenements granted under the *Mining Act 1978* (the Mining Act) and clarity to tenement holders of their responsibilities and obligations.

To ensure these conditions remain robust, effective, and enforceable, DEMIRS completed a review of its schedule of standard conditions. The review was limited to conditions imposed on grant, or those applied after Ministerial consent for access to protected lands. It did not include environment-related conditions¹ to prevent or reduce injury to the land and were released for public consultation.

The review of standard conditions sought to remove duplicate, redundant and one-off or specific conditions that no longer serve a purpose, and conditions which replicate protections afforded by legislation.

Conditions catered for under other acts and regulations, including those administered by other government agencies are recommended to be imposed instead as endorsements. This allows DEMIRS to monitor and enforce conditions on the title, without the risk of acting beyond the power of the Mining Act.

The review included the department's response to the Supreme Court's findings in *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd [2022] WASC 362* (Blue Ribbon) and a process to progress mining tenement applications with objections proposed to be resolved through access agreements or agreed Minutes Of Programming Directions (MOPD) by consent.

Any changes to DEMIRS standard conditions as an outcome of the consultation will apply prospectively. There will be no changes to existing standard conditions and endorsements that are applied to granted tenements.

Consultation

The 'Review of Standard Conditions for Mining Tenements', 'Guidance statement – Use of 'No Mining' conditions under the *Mining Act 1978*' and 'Guidance statement – Excisions of area of land upon the grant of an application for exploration licence' were all made available for public consultation between 17 November 2023 and 9 February 2024.

DEMIRS proactively contacted a range of stakeholders to encourage them to provide submissions to the consultation on the review of standard conditions and guidance statements at the start of the consultation period and also undertook information sessions.

An in-person information session was held on Wednesday 6 December 2023 and an online information session was held on Thursday 7 December 2023.

Consultation was targeted through the Resources Industry Consultative Committee (RICC), key industry bodies, specialist tenement consultant firms, legal representatives, companies, government agencies and other resources industry stakeholders including private railway holders.

The review process notified respondents that their submissions would be made publicly available on the DEMIRS website.

At the closure of the public consultation process on 9 February 2024, DEMIRS received 10 submissions relating to the review of standard conditions. Six out of the 10 submissions received provided overall support to the review of standard conditions.

There were two key themes arising out of the submissions received.

¹ https://www.dmp.wa.gov.au/Documents/Minerals/List_of_Standard_Conditions_and_Endorsements.pdf

Key themes

1. Conditions to endorsements

The Chamber of Minerals and Energy of Western Australia (CME) raised concerns around replacing standard conditions with endorsements, expressing that there is a lack of detail in the endorsement description.

DEMIRS review of standard conditions identified certain conditions are outside of DEMIRS ability to monitor and enforce compliance. Additionally, some conditions are addressed under other legislation and have been recommended to be imposed as endorsements.

The intent of endorsements is to direct applicants to their obligations under legislation that is not administered by DEMIRS but are relevant to activities undertaken on mining tenements.

Directing tenement applicants to the relevant legislation, by way of endorsements, will eliminate arbitrary buffers and will provide greater clarity to tenement applicants of their obligations under other legislations.

2. Pastoral leases

Red Hill Station (Red Hill) provided a submission with a key theme around pastoral land.

Red Hill's submission requests that if a tenement application encroaches upon a pastoral lease, DEMIRS should consult with, consider comment from and address concerns of the pastoral lessee prior to granting the approval. DEMIRS understands that this suggestion is something Red Hill considers should be followed when an applicant applies for a mining tenement.

This is considered to be directed at the point of application stage and provides suggestions around what an applicant should do if they apply for a tenement over a pastoral lease. DEMIRS considers this submission is out of scope for the purposes of this paper for the following reasons:

1. Implementing and enlivening such a change would require legislative amendments to the Mining Act.
2. If changes to the application stage were to be implemented, further consultation would need to be undertaken as legislative change would be required.

It is important to note that the Mining Act serves to protect pastoral lease interests and there is no need to replicate the legislative provisions in the conditions. The purpose of the review of standard conditions was to rationalise the schedule of conditions with a focus on conditions that were:


- inconsistent with the Mining Act or ultra vires;
- addressed within provisions of the Mining Act or other legislation appropriate to the scope of activity on grant of tenure; and
- redundant or duplicative.

Where a mining tenement application has been received and processed by the Mining Registrar, the applicant is required to undertake certain actions including sending a copy of the application to the affected pastoral lessee by registered post or certified mail together with a copy of the map in accordance with section 118 of the Mining Act.

The tenement applicant is required to notify the pastoral lessee prior to accessing the pastoral lease in accordance with section 20(5) of the Mining Act.

It is also relevant to note that section 123 of the Mining Act provides for a pastoralist to be compensated for any:

- damage to improvements on the land, and for any loss suffered by the lessee as a result of that damage.
- substantial loss of earnings resulting or arising from any exploration or mining activities by the tenements holders.



It is the responsibility of the applicant to proactively engage with the pastoralist so that the legal rights of both mineral and grazing activities are preserved. Early engagement will allow time to address any matters raised by either party.

DEMIRS recommends that the applicant and pastoralist give consideration to the use of access agreements for resolving objections for mining tenements under the Mining Act as opposed to relying on the objection process and use of MOPD.

Whilst MOPDs propose to resolve objections (before the Wardens) with the parties agreeing to certain conditions, it is ultimately the decision of the Minister to grant an application on any terms and conditions as the Minister thinks fit.

Should the MOPDs contain such conditions that are considered not enforceable by the Minister under the Mining Act then such conditions may not be approved.

Access agreements do not require approval of the Minister and provide both parties with consistency, certainty and flexibility in resolving objections. Where an applicant is in breach of a condition the subject of an MOPD, the only form of remedy of such breach is by forfeiture action.

When exploring on a pastoral lease, applicants must take all reasonable and practical steps to notify the pastoralist about where they plan on operating and for how long.

Mining, exploration and prospecting activities using ground disturbing equipment require an approved Programme of Works, pursuant to sections 46, 63, 70H, and 82 of the Mining Act. The Mining Act requires that a Programme of Works is lodged in the prescribed manner and approved by the Minister (or a prescribed officer) prior to a tenement holder conducting any ground disturbing activities with mechanised equipment.

Responses to submissions

Please see Annexure A.

Annexure A			
Ref #	Stakeholder	Comment	DEMIRS Response
1.	Amalgamated Prospectors and Leaseholders Association of W.A. Inc. (APLA)	<p>Condition 22–APLA considers that all invested stock route reserves should be open for prospectors and explorers without any conditions.</p> <p>Condition 660 should be removed. Parallel assessments should be undertaken prior to tenement grant.</p>	<p>Overall support for conditions noted.</p> <p>Standard Condition 22 – The Minister for Mines is required to consult with the relevant minister of the land and in the case of unvested stock routes that is the Minister for Lands.</p> <p>Standard Condition 660 is one that is offered by the State to Native Title Parties (NTPs) during any future act process in accordance with the <i>Native Title Act 1993</i> (NTA) which includes the expedited statement.</p> <p>The State offers this condition to allow for the NTP to consider withdrawing their objection to the inclusion of the expedited statement, thereby allowing for the quicker resolution of the future act process.</p> <p>It is not common for this condition to be imposed, a review of DEMIRS records shows that it has been imposed on five Exploration Licences and no Prospecting Licences granted in the last two years. During which time over 3900 Exploration Licences or Prospecting Licences were granted; representing 0.13%.</p> <p>The alternative to DEMIRS imposing this condition is for the applicant to engage with the NTP to negotiate an agreement which considers heritage protection processes.</p> <p>DEMIRS may consider parallel processing upon receiving a written request from the applicant.</p>
2	Mine Operations Exchange (MOX)	<p>Condition 4–often drilling will occur on the footprint of the cutback or planned waste dump. There should be no reason why these need to be rehabbed if the area is going to be mined or made into a waste dump.</p>	<p>Noted. This condition has been updated following consultation on DEMIRS' Programme of Work and Rehabilitation Guidance.</p> <p><i>"Exploration and prospecting disturbances, excluding supporting infrastructure, being backfilled and rehabilitated to the satisfaction of the Environmental Officer, Department of Energy, Mines, Industry Regulation and Safety. Backfilling and rehabilitation being required no later than 12 months after completion of the activity unless otherwise approved in writing by the Environmental Officer, Department of Energy, Mines, Industry Regulation and Safety."</i></p> <p>Use of the phrase "to the satisfaction of the Environmental Officer" allows for rehabilitation obligations in these scenarios to be assessed on a case by case basis.</p>

Annexure A

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3	Fortescue Ltd	<p>Fortescue noted that legislation intervention should be used to secure appropriate protections for heavy haulage rail infrastructure. In particular, conditions that protect railways similar to those protections that exist for railways operating under the <i>Railway Freight Systems Act 2000</i> could be imposed as standard conditions on the grant of an exploration licence.</p> <p>Fortescue requests clarification in relation to:</p> <ol style="list-style-type: none"> 1. when DEMIRS will undertake a further review and consultation specifically in relation to standard conditions for railways under State Agreements and Miscellaneous Licences; and 2. in the absence of such standard conditions (and aside from the standard 'no mining' condition referred to below), how DEMIRS proposes to protect railways under State Agreements and Miscellaneous Licences. 	<p>Noted. DEMIRS will continue to liaise with private railway operators to determine a sufficient standard 'no-mining' condition to impose upon grant where an application is affecting a private railway operation and potentially include other linear infrastructure.</p> <p>1–2. DEMIRS review was of the current standard conditions that it imposes upon grant of title.</p> <p>However, as part of the draft guidance statement 'Use of 'No Mining' conditions under the <i>Mining Act 1978</i>', DEMIRS proposed two additional conditions:</p> <p>'Standard 'no mining' condition for the protection of private railways'.</p> <p>'Standard 'no mining' condition for the protection of 'other' discrete areas of land'.</p> <p>DEMIRS will not proceed with the draft standard 'no mining' condition for the protection of private railway until further consultation has occurred. In absence of this standard condition, DEMIRS may consider imposing the standard 'no mining' condition for the protection of other discrete areas of land as it sees fit. Please refer to <i>DEMIRS Response to submissions – Guidance statement – Use of 'No Mining' conditions under the Mining Act 1978</i>.</p>
4	Department of Biodiversity, Conservation and Attractions	<p>Condition 554 refers to the <i>Wildlife Conservation Act 1950</i>. On 1 January 2019, the <i>Biodiversity Conservation Act 2016</i> and the Biodiversity Conservation Regulations 2018 replaced both the <i>Wildlife Conservation Act 1950</i> and the <i>Sandalwood Act 1929</i> and their associated regulations. <i>The Biodiversity Conservation Act 2016</i> and Biodiversity Conservation Regulations 2018 provide greater protection for biodiversity, particularly threatened species and threatened ecological communities. Documentation and guidance should be updated accordingly.</p>	<p>Agreed. Condition 554 will, when published, replace <i>Wildlife Conservation Act 1950</i> and Regulations with <i>Biodiversity Conservation Act 2016</i> and Regulations.</p>

Annexure A

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5	Cement Concrete and Aggregates Australia (CCAA)	<p>CCAA supports the revised standard conditions as published and makes the following comments to improve their application and efficiency of process:</p> <ul style="list-style-type: none"> The standard conditions should be applied to mining tenements where they are relevant and applicable and match the circumstances of that site. For example, conditions regarding salinity should not be included where none exists on hills or where there are no water courses in the tenement. DEMIRS should ensure their workflow and administrative processes support the successful introduction of these conditions. For example, the condition that the Mining Proposal must be approved prior to any ground disturbance needs timely DEMIRS processes as well as proponent education to ensure the appropriate information is provided to DEMIRS in the first place to limit any unnecessary delays in this approval step. 	<p>Support noted.</p> <ul style="list-style-type: none"> In reference to the condition regarding salinity, this is out of scope for the purposes of this consultation as this consultation was for the <i>Review of Standard Conditions for Mining Tenements</i> imposed on grant and did not include environment-related conditions to prevent or reduce injury to the land. Noted.

Annexure A

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6	BHP Billiton Group Operations Pty Ltd.	<p>Condition 4 – Note that the six months is soon to be amended to 12 months, as per DEMIRS recent correspondence.</p> <p>Condition 7 – Recommend wording be amended to notify the pastoralist either verbally or in writing (as opposed to by registered post). Despite this condition, it is industry standard to email pastoral notifications.</p> <p>New – The proposed new condition requires a Mining Proposal for General Purposes Leases; however, the recent amendment to the Mining Act will remove this requirement for General Purpose Leases (and Miscellaneous Licences) held pursuant to a State Agreement. Recommend clarifying whether the proposed new condition will add that requirement back in. We make the same comment regarding condition 508, as it relates to miscellaneous licences granted pursuant to a State Agreement.</p> <p>Condition 14 – This is a key condition to protect infrastructure located on a miscellaneous licence. It is unclear why DEMIRS takes the view that this is unenforceable and we would request that DEMIRS reconsider deleting this condition.</p>	<p>Condition 4 – Noted. This condition has been updated following consultation on DEMIRS' Programme of Work and Rehabilitation Guidance to reflect the revised 12 months rehabilitation timeframe.</p> <p>Condition 7 – Noted. This condition has been amended.</p> <p>New – Noted. This condition will be removed following commencement of the amendments introduced by the <i>Mining Amendment Act 2022</i>. Pending implementation of the amendments, holders are still required to submit mining proposals.</p> <p>14 – DEMIRS determined that this condition is already covered by section 117 of the <i>Mining Act 1978</i>. Should a further ingress and egress condition be required then it is something that may be agreed to by way of Access Agreement or by a 'no mining' condition proposed in the guidance statement 'Use of 'No Mining' conditions under the <i>Mining Act 1978</i>' where the tenement holder believes that section 117 does not adequately protect its mining tenement.</p>

Annexure A			
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		<p>Conditions 17, 18 and 19 – DEMIRS proposes to delete these conditions or replace them with endorsements which refer to the protections under regulations 97 and 98 of the Mining Regulations. Regulation 97 only prevents obstructions or interference with roads that endanger ‘the public safety’. Regulation 98 only applies to roads which are used for ‘agricultural, pastoral, fruit-growing, forestry or other useful purposes’, which may not include private roads used for mining operations. On that basis, and in light of our query at paragraph 1 above (whether private roads will be protected by ‘no mining’ conditions), we recommend DEMIRS retains these conditions on the basis that the regulations referred to may not adequately protect private roads.</p> <p>Conditions 34 and 35 – DEMIRS proposes to replace both conditions with one endorsement, which will exclude miscellaneous licences and State Agreements. Recommend miscellaneous licences and State Agreements should be included to protect rail located on such tenure.</p> <p>Condition 49 – DEMIRS proposes to replace this ‘no mining’ condition with an endorsement. We seek clarification as to whether the new ‘no mining’ conditions will be imposed on tenements to protect infrastructure such as water pipelines.</p>	<p>17–19 – The current conditions do not refer to private roads. Private roads may be protected in accordance section 117 or 132 of the Mining Act 1978.</p> <p>34–35 – Currently the conditions are not used for railways on Miscellaneous Licences or State Agreements.</p> <p>49 – This condition is used for water pipelines/water mains that are more ‘public works’ with no specific tenure or where a third party pipeline is to be protected to ensure there is no activity undertaken that would damage the water supply.</p> <p>This condition is not used to protect infrastructure for the purposes of a miscellaneous licence, mining lease or general purpose lease as the applicants/holders can enter in to access agreements which specify their activities in the given area and any specific conditions.</p> <p>DEMIRS is open to extending the ‘Standard ‘no mining’ condition for the protection of private railways’ proposed in the draft guidance statement for ‘Use of ‘No Mining’ conditions under the Mining Act 1978’ to all linear infrastructure including pipelines subject to further consultation.</p>

Annexure A

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Conditions 430 to 437 (and 553?) – DEMIRS proposes to remove all conditions which currently protect private railways and replace them with the ‘no mining’ condition referred to at paragraph 1 above (see Guidance Statement – Use of ‘No Mining’ Conditions, item 6.1). In our submission, some of these deleted conditions are not covered by the new ‘no mining condition’. For example, Condition 431 requires surface excavation to be a certain distance from the buffer zone. As per our comments at paragraphs 1 and 2 above, noted above, we are concerned that the new ‘no mining’ condition is insufficient, by itself, to protect BHP’s railways</p>	<p>430–437 and 553 – DEMIRS is not going to proceed with imposing a ‘no mining’ condition for the protection of private railways at this time and will commence further consultation with railway operators. Conditions 430-437 do not currently apply <i>Railway State Agreements they apply to Rail Freight Systems Act 2000</i>.</p>
7	The Chamber of Minerals & Energy of Western Australia (CME)	<p>The CME recommends that endorsements are drafted to retain a high level of detail that enables tenement holders to easily understand their obligations.</p> <p>Reference 19 and Reference 34 have both been identified as endorsements that contain a lower level of detail, compared to the current, equivalent standard conditions. Specifically, members have noted a lack of reference to specific legislative provisions of the <i>Rail Freight Systems Act 2000</i> in Reference 34, and the absence of supporting detail in both Reference 19 and 34 endorsements.</p> <p>Members note that deleting standard conditions that are covered in ‘Programme of Work assessments’ (specifically Reference 109–114), risks fragmenting tenement holders’ source of compliance obligations and requirements, as conditions will no longer be found in one location.</p>	<p>Recommendation that endorsements are drafted to retain a high level of detail is noted. Endorsement 19 references the applicable regulations with Endorsement 34 referencing the relevant legislation. The reason behind certain conditions being imposed as endorsements is because they sit outside of DEMIRS ability to monitor and enforce conditions that are addressed under other legislation that the Minister for Mines does not administer. The purpose of endorsements are to assist and direct applicants to their obligations under the relevant legislation. Please refer to Key Theme 1 at page 4 of the Response to submissions for further information.</p> <p>DEMIRS notes CME’s suggestion relating to the Programme of Work obligations in one source document. DEMIRS refers CME and its members to the Programme of Work Guidance guidelines on its webpage:</p> <p>www.dmp.wa.gov.au/Documents/Environment/Programme-of-WorkGuidance.pdf</p>

Annexure A			
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		The CME understands that 'Programme of Work approved applications' now contain specific details of the approval. Members have highlighted the importance of being able to access their relevant obligations in one source document. It is suggested that DEMIRS should manage the provision of supplementary information to facilitate this.	

Annexure A

Ref #	Stakeholder	Comment	DEMIRS Response
8	Red Hill Station	<p>Condition 5 – When on a pastoral lease, waste materials, rubbish, sample bags etc should never be accessible to livestock. Livestock, particularly in areas where soils are deficient in particular elements and where conditions and pastures are often dry, are likely to eat and ingest inanimate object causing contamination, sickness and/or death.</p> <p>This condition should also require all such materials to be contained in such a way that they remain inaccessible to livestock at all times.</p> <p>New Condition (between 9 and 14), 17–19.</p> <p>Condition 303 – condition should be retained if the licence encroaches upon a pastoral lease to ensure the safety of livestock.</p> <p>Condition 305 – should be expanded to include that ingress and egress of pastoralists must be preserves by the construction of vehicular access crossings and livestock crossings if applicable, across any road or other installation constructed on the mining tenements. For example, if a haul road intersects a pastoral road, provision needs to be made during construction of the haul road to enable ingress and egress of the pastoralist on the pastoral road which intersects the haul road.</p> <p>Condition 306 – Disagree with amendments and rationale given. The amendment is ‘simplified’ and the amendment does not appear to make it any more enforceable as the word ‘appropriate’ is subjective.</p>	<p>Condition 5 – Noted, DEMIRS will take this under consideration.</p> <p>The remainder of the conditions you have provided a submission to have been addressed through Key Theme 2 at pages 4–6 of the <i>Response to submissions</i> for further information relating to pastoral leases.</p> <p>In response to point 5 of the ‘General comments’ the standard conditions imposed will not be the same all the time as any changes to DEMIRS standard conditions as an outcome of the consultation will apply prospectively. There will be no changes to existing standard conditions and endorsements.</p>

Annexure A

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Condition 508 – Agree with the amendment and if the tenement encroaches upon a pastoral lease DEMIRS should consult with, consider comment from and address concerns of the pastoral lessee prior to granting the approval.</p> <p>General comments</p> <ol style="list-style-type: none"> 1. DEMIRS should consider the introduction of new standard condition to be applied to the grant of any mining tenement encroaching upon a pastoral lease such that the tenement holder must enter into an access agreement with the pastoral lessee prior to any earth disturbing works or interference with or use of pastoral infrastructure, including pastoral roads. Such an agreement may range from simply relying on mining legislation and tenement conditions to a negotiated and more complicated agreement. This would provide a mechanism for mining tenement holders and pastoralists to negotiate access and compensatory arrangements without engaging in the objections process in the Wardens Court. 2. It is proposed to delete conditions which are said to be addressed in Programme of Work assessments. DEMIRS should consult with, consider comment from and address concerns of any pastoral lessees impacted by proposed activities prior to the Programme of Work being approved. 	

Annexure A			
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		<p>3. Approved Programme of Works should also be available to the lessee of any pastoral lease impacted by the activities so that they are properly aware of the extent, location and nature of approved works on their pastoral lease.</p> <p>4. A suite of conditions relevant to tenements encroaching upon pastoral leases could be grouped together within the table of standard conditions for ease of reference and application. That is, the 'Topic' could be pastoral lease – and the suite of standard condition relevant to pastoral lease land could be applied to all tenements encroaching upon pastoral leases.</p> <p>5. The standard conditions imposed upon similar and overlapping mining tenements should be consistent. For example, when two miscellaneous licences are granted over the same area for the same purposes, the conditions should be the same, or at least have a consistent intent and outcome.</p>	

Annexure A			
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9	Association of Mining and Exploration Companies (AMEC)	<p>AMEC supports the use of standard conditions on tenure.</p> <p>Two transitional questions have arisen:</p> <ul style="list-style-type: none"> The Government has removed 42 of the 113 existing standards conditions, because of a determination by the Department that they are unenforceable. Will the examples of these conditions on live tenure be treated as unenforceable? Nine conditions have been amended to increase clarity. Should tenure holders with the unclarified conditions expect that their condition will be reinterpreted accordingly? 	DEMIRS can confirm that there are no retrospective changes to those mining titles that are currently granted and consider the current grants valid.

Annexure A

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10	Australian Gas Infrastructure Group (AGIG)	<p>AGIG considers that the current protections afforded to transmission pipelines by these conditions are sensible and important. Specifically, the inclusion of these conditions upon the grant of a tenement by DEMIRS to a mining company ensures that the mining company is expressly:</p> <ol style="list-style-type: none"> 1. aware of minimum safety requirements when planning their activities; 2. provided with guardrails that provide a minimum level of protection to pipelines that are measurable and able to be included in activity planning documents and risk registers; 3. required to ensure right of continuous access to pipeline operators to enable operation and maintenance of the pipeline; and 4. directed to consult with the petroleum pipeline licensee in the event that a mining company wishes to operate inside of the minimum guardrails. 	<p>DEMIRS notes AGIG concerns with the proposed Endorsements. However these conditions are addressed under other legislation, namely <i>Petroleum Pipelines Act 1969</i> and <i>Dampier to Bunbury Pipeline Act 1997</i> which provide certain protections and is why the conditions are proposed as an endorsement.</p> <p>Any non-standard conditions that parties wish to imposed may be considered through the use of Minutes of Programming Directions if it is considered that access agreements or standard conditions do not adequately protect their interests.</p> <p>(i–ii) – Any damage or loss caused, to a pipeline, in respect of mining is compensable in accordance with section 123 of the Mining Act.</p> <p>(iii) – DEMIRS acknowledges that there is no legislative definition of “reckless” in the <i>Petroleum Pipelines Act 1969</i>. DEMIRS has proposed to refer directly to the relevant pieces of legislation through an endorsement.</p> <p>Currently, remedy of a breach of condition can only be addressed by way of forfeiture. A more appropriate remedy for any ‘reckless’ interference, damage or loss is by way of compensation in accordance with section 123 of the Mining Act or the appropriate Act (DBNGP/PPA).</p>

Annexure A

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Importantly the conditions take into account the fact that the pipelines can sit buried anywhere within the pipeline licence area – including up to the edge of the corridor and have a corresponding wider impact outside of the pipeline corridor. Further, they give priority to preservation of the existing buried assets consistent with the “first in time” principle and raise express awareness of this priority in the minds of mining companies. This in turn provides a measure of protection to people and the environment in the vicinity of pipeline licence areas, the oversight of which is also within the remit of DEMIRS under both the Mining Act and the PPA.</p> <p>Where tenure is granted to a mining company over a pipeline licence area, although reference to these provisions does make it clear that pipelines must not be damaged “intentionally or recklessly” and, in the case of the DBNGP, for any mining works to be carried out within the pipeline licence area consultation with the LAM must take place and conditions may be applied, AGIG submits that the existing conditions 673-677 provide better guidance to miners and better baseline automatic protection to pipelines.</p>	<p>The proposed Endorsements become the guardrails and assist in establishing and referring the registered tenement holder to the relevant other Acts addressing safety and consent requirements.</p> <p>(iv) – An objector can apply for a cost order under regulation 165(2) of the Mining Regulations 1981 in which the objector can recover their costs.</p> <p>(v) – DEMIRS suggests that this is something AGIG raise with the Land Access Minister to ensure notifications are received within the relevant timeframe accordingly.</p> <p>Further to the above DEMIRS is happy to undertake further consultation with you and other pipeline holders to develop a standard ‘No Mining’ condition for certain pipelines under the <i>Petroleum Pipelines Act 1969</i>.</p> <p>Proposed new condition:</p> <p><i>No mining within 25 metres of either side of, to a depth of 50 metres AND/OR no explosives being used or stored within 150 metres of the petroleum pipeline licence area of ***PLXXX*** being the Consultation Area, without the mining tenement holder and the petroleum pipeline licensee consulting with each other and reaching agreement on access and mining activities to be undertaken within the Consultation Area AND/OR reaching an agreement as to a lesser distance relating to the use or storage of explosives.</i></p>

Annexure A

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		<p>In summary, AGIG considers that problems with the proposed wording/reliance on the statutory provisions compared with the status quo are as follows:</p> <ul style="list-style-type: none"> (i) For non-DBNGP pipelines, there is no requirement that works remain outside of the relevant pipeline licence area and there is no further buffer outside of the pipeline licence area that would protect the existing pipeline in the event that the pipeline abuts the corridor edge; (ii) For the DBNGP there is no further buffer outside of the pipeline licence area that would protect the existing pipeline in the event that the pipeline abuts the corridor edges; (iii) There is no definition of what “recklessly” means in the PPA, so it is not clear whether “reckless” is intended to mean “negligent” or requires something more. Ordinarily, recklessness implies a higher level of disregard or lack of care than negligence. Recklessness refers to a conscious and unjustifiable disregard of a known or obvious risk likely to cause harm. Accordingly AGIG considers that the proposed changes do not provide a sufficient level of protection for its assets/disincentive for miners to take adequate precautions and, in the event of damage to a buried pipeline, would be likely to lead to extensive litigation to establish whether a miner’s actions were merely “negligent” or were “reckless” thus triggering s65 of the PPA. The guardrails established by the existing conditions would at least assist establish what is meant by “reckless”; and 	

Annexure A			
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		<p>(iv) AGIG has to date objected to mining tenure applications that overlap its pipelines where it is aware of the relevant application. However, for efficiency reasons, AGIG had internally recommended stopping this process in certain overlaps on the strength of conditions 673-677 backed up by the statutory provisions mentioned above. Removal of the conditions will result in AGIG having to object to the grant of any mining tenure that overlaps its operations in the Warden's Court in order to ensure that the Submission to DEMIRS_Review of Standard Conditions_100524_final Page 4 of 5 mining tenure applicant enters into an Access Deed with the relevant AGIG entity to protect AGIG's assets. In AGIG's experience, these objections are time consuming and mount up in costs (both internal and external) that are not recoverable. In addition this process causes delay to the miner's project and causes congestion in the Warden's Court.</p>	

Annexure A			
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		<p>(v) AGIG is not always made aware of the tenement applications overlapping the DBNGP corridor as notice is given by DEMIRS to the LAM only as the legal owner of the DBNGP corridor. Unless the LAM correspondingly notifies AGIG of the proposed tenement application within the statutory timeframes, AGIG may be time barred from objecting to the tenement application or is denied the opportunity to enter into an Access Deed with the tenement applicant. In these circumstances, the standard conditions will at least impose some baseline requirements and protection relating to activities in proximity to the critical DBNGP pipeline.</p> <p>Accordingly, AGIG respectfully submits that Conditions 673–677 provide practical guidance to miners and ought remain in place for the benefit of high pressure transmission pipeline assets in WA, as well as the mining companies to whom tenure is granted.</p>	

Government of Western Australia

**Department of Energy, Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

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