



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**

DISCUSSION PAPER

# **Discussion Paper – Eligible Mining Activity Framework**

For eligible mining activities under the *Mining Amendment Act 2022*

## **PURPOSE**

This discussion paper provides an indicative overview of the proposed eligible mining activity (EMA) framework introduced by the Mining Amendment Bill 2021 (now *Mining Amendment Act 2022*) for stakeholder feedback. Stakeholders are invited to review the indicative framework and provide feedback. These submissions will be considered as part of the development of the EMA framework as well as informing the drafting of amendments to the Mining Regulations to establish the framework.

The Department will provide a response to each submission which will be collectively published in a response to submissions document. Submissions will be published verbatim, with the submitter listed.

## **INTRODUCTION**

The *Mining Amendment Act 2022* (the Amendment Act) amends the *Mining Act 1978* (Mining Act) to increase the efficiency of applications and assessments for mining activities.

A key feature of the Amendment Act is the introduction of the EMA framework, which is a new form of authorisation for certain minimal disturbance 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 the Department of Mines, Industry Regulation and Safety (DMIRS). Eligible activities may be undertaken following the successful lodgement of an EMA Notice, and will be subject to a standard set of conditions.

The intent is that eligible activities will be those that pose a low risk to the environment and do not occur in sensitive environments. The draft criterion for EMAs and draft standard conditions are presented below for stakeholder feedback. When finalised, the criteria and conditions will be prescribed in the Mining Regulations.

Though it is an automated process and activities contained within an EMA Notice will not be subject to assessment by an Environmental Officer, the EMA framework is being developed to ensure full information capture, whilst still occurring within the robust regulatory framework that applies to mining activities. This new process will create efficiencies for industry and Government by removing the timeframe associated with the assessment of applications for Programmes of Works (PoW) or Mining Development and Closure Proposals (MDCP) (currently Mining Proposals and Mine Closure Plans).

As this framework is new, innovative and does not require environmental assessment by an Environmental Officer, the Department is restricting its use to prospecting and exploration activities in the first instance. The Department will conduct a review two years after the commencement of the framework to establish its appropriateness with respect to mining activities.

## **1. ELIGIBLE MINING ACTIVITIES**

### **1.1 Proposed Draft EMA Criteria**

The EMA framework is intended to serve as an alternate mode to seek authorisation to undertake certain activities that are minimal in disturbance, do not result in a lasting environmental impact and can be managed through the imposition of standard conditions without the need for assessment by an Environmental Officer.

Given these low risk and low impact activities will not be subject to formal environmental assessment by an Environmental Officer it is imperative that appropriate criteria of what constitutes an eligible mining activity are established in order to mitigate risk to the environment.

The following proposed draft criteria are put forward for stakeholder consideration. These criteria are based on the nature, scale and location of activities. To be considered an eligible mining activity, proposed activities must meet all criteria.

The Department provides this criterion as a suggested model and invites stakeholders to consider the proposed criteria and provide comments.

#### **1.1.1 Nature of activities**

##### **a) Types of activities that can be EMAs**

The following is an indicative list of the types of activities that could be an EMA.

##### *Exploration Activities*

- i) Drilling and associated activities such as sumps and tracks (excluding activities requiring cut and fill construction)
- ii) Test pits

##### *Prospecting Activities*

- iii) Scraping and detecting, and associated activities such as tracks (excluding activities requiring cut and fill construction)
- iv) Excavations, including trenches and costeans, and associated activities such as tracks (excluding activities requiring cut and fill construction)

An EMA Notice can include a number of different eligible activities, provided they all fit within the EMA criteria.

##### **b) Exclusion of radioactive and fibrous materials**

The EMA framework will not be available for activities where a Radiation Management Plan or Asbestos Management Plan is required under the Work Health and Safety (Mines) Regulations 2022. Given the potential hazards

associated with the extraction of these radioactive or fibrous materials, the Department considers there to be a need to assess these activities to ensure risks can be appropriately managed, adequate safety approvals and adequate rehabilitation and closure planning is undertaken.

### **1.1.2 Scale of activities**

#### **a) Size of activity area**

The Department proposes that the maximum size of activity area per EMA Notice is **two** hectares. An EMA Notice may cover multiple tenements, however cumulative activity across all tenements cannot exceed two hectares.

#### **b) Excavations**

##### *Surface Area*

Where an EMA Notice contains excavations, the Department proposes that the total surface area of all excavations within the Notice cannot exceed 100m<sup>2</sup>. This is to ensure only low risk and low impact activities can be undertaken through the EMA framework, whereas more significant activities continue to be assessed against environmental risks.

##### *Depth*

The Department proposes there be a depth limitation of 2 metres for excavations that are able to be undertaken through an EMA Notice. This is to ensure that activities do not present a risk to groundwater and the types of material being excavated do not represent unacceptable risk to the surrounding environment.

The Department considers that any excavations that are undertaken beyond a depth of 2 meter requires assessment by Departmental officers to ensure any risks are identified and controlled.

#### **c) Number of EMAs at any one time**

The Department proposes that only one EMA Notice may be active on a tenement at any one time.

On completion of an EMA, a tenement holder must lodge a notice of completion with the Department (see section 6 – EMA Notices of Completion), after which another EMA may be lodged. This is to control the scale of low impact and low risk activities being undertaken without assessment by an Environmental Officer, and ensure that larger scale mining activities continue to be progressed via PoWs and MDCPs.

### **1.1.3 Location of activities**

#### **d) Excluded areas**

The EMA framework will generally be applicable for most lands across the State whereby there is an existing mining tenement, with some exceptions.

It is proposed that the following area be excluded from an EMA, as these localities may include environmental sensitivities or confirmation of consent from a landholder that may require assessment by an Environmental Officer.

- Lands protected under sections 24, 24A and 25 or 25A of the Mining Act. This is designed to protect the existing consultation and consent requirements for reserves and Commonwealth land established in the Mining Act.
- Environmentally Sensitive Areas (as declared in the *Environmental Protection (Environmentally Sensitive Areas Notice 2005)* or prescribed in Regulations pursuant to the *Environmental Protection Act 1986*).
- Threatened Ecological Communities
- Priority Ecological Communities
- Within 50m of an area containing priority flora
- Within 50m of areas containing threatened or priority fauna
- Dieback Risk Zones
- Public Drinking Water Source Areas, proclaimed as catchment areas, water reserves or underground water pollution control areas under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* or the *Country Areas Water Supply Act 1947* (CAWS Act)
- Waterway Management Areas proclaimed under the *Waterways Conservation Act 1976*
- Clearing Control Catchments proclaimed under the CAWS Act
- Wild Rivers Catchments
- Ramsar wetlands or wetlands listed on the Directory of Important Wetlands
- Private land
- Registered or Lodged Aboriginal Heritage Sites under the *Aboriginal Heritage Act 1972*. DMIRS notes that this criteria will need to be reviewed once the Aboriginal Cultural Heritage Act 2021 commences.
- Heritage Sites entered into the State Register of Heritage Places under the *Heritage Act 2018*
- Mining tenements intersecting with town sites (section 26A of the Mining Act).

The areas listed above are those which the Department is proposing to explicitly exclude from the EMA Framework. There are several other areas (i.e. areas under assessment by the Environmental Protection Authority, areas covered by Indigenous Land Use Agreements (ILUAs) and miscellaneous licences) which, whilst not excluded from the framework, will require applicant to provide further information and/or commitments as part of their EMA Notice submission (see section 3.1 for further information).

## **1.2 Ability for Minister to Exclude Areas from EMA Framework**

The Amendment Act provides for the Minister to exclude particular areas, by publishing a notice in the *Government Gazette*, from being eligible for application and assessment through an EMA Notice. This may be done where the Minister does not feel it is appropriate for an EMA Notice to be given in a particular area, for example, conservation areas that are known but are not protected by the provisions of other legislation (i.e. Proposed State Conservation Estates).

## **2. Proposed Standard conditions**

As provided in the Amendment Act, activities undertaken by way of an EMA Notice must be undertaken in accordance with prescribed requirements. This will include undertaking activities in accordance with a suite of standard conditions that will apply to every EMA Notice. Failure to comply with these conditions will render the relevant tenement to be liable for forfeiture.

Standard conditions will be imposed following authorisation of an EMA Notice. These conditions are consistent with existing standard environmental management commitments proponents are required to comply with under a PoW. The below outlines the intent of the conditions, however these will be refined and reviewed for clarity and enforceability.

1. Significant vegetation such as large trees and dense patches of vegetation are to be avoided.
2. 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.
3. Excavations are to be appropriately ramped to allow fauna egress.
4. Rehabilitation resources (e.g. topsoil, subsoil and cleared vegetation) are to be harvested, stored and protected in a manner that maintains their viability for use in rehabilitation.
5. All intercepted groundwater and other fluids (i.e. drill foam and mud) are to be appropriately stored and contained to prevent discharge to the environment.
6. No activities to be undertaken within a bed or bank of a watercourse and no impacts to riparian vegetation.
8. All environmentally hazardous materials are to be appropriately stored and managed to prevent contamination or pollution of the land
10. Any spills must be cleaned immediately, with contaminated material removed from site and disposed of appropriately.

11. 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.
12. All sample bags, rubbish and temporary infrastructure are to be removed from site at the completion of activities.
13. 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.
14. Drill samples are to be removed from the surface of land and either buried or removed from site and disposed of appropriately.
15. All excavations are to be backfilled or appropriately made safe
16. Compacted areas such as access tracks, core farms, camp sites, etc, are to be rehabilitated in an appropriate manner (e.g. deep ripped, scarified)
17. Topsoil and cleared vegetation is to be respread over all cleared areas.
18. Access to all rehabilitated tracks is to be blocked off.
19. Appropriate erosion control is to be implemented in rehabilitated areas (e.g contour ripping, runoff management, etc.)

### **3. Lodging an EMA Notice**

Eligible Mining Activity Notices will be applied for through the Department's online spatial system, which is currently used for the lodgement of Spatial PoWs. It is envisaged that the lodgement process will prompt applicants to provide detailed information on the types of activities, location of proposed activities, and scale of disturbance, etc, along with confirmation that the applicant will comply with all standard conditions. In some instances, the system may prompt the applicant to provide additional information, based on the spatial location of proposed activities (see section 3.1).

If an application complies with all of the specified EMA criteria the electronic system will allow the applicant to serve the EMA Notice to the Department, and the applicant will be able to undertake the activities in accordance with the EMA Notice and prescribed conditions.

Where an application does not meet the EMA criteria (and is therefore unable to be served to the Department), the spatial system will enable applicants to proceed with a spatial PoW for submission and assessment by an Environmental Officer.

#### **3.1 Additional information required with lodgement**

Where an EMA is lodged in the following areas, it is proposed that the system will prompt the applicant to provide additional information and/or confirmations prior to the notice being served to the Department.

##### **3.1.1 Areas under assessment by the Environmental Protection Authority**

Where the lodgement system identifies that a proposed EMA is within an area currently under assessment by the Environmental Protection Authority (EPA) under section 38 of the *Environmental Protection Act 1986*, the applicant will need to provide confirmation that the proposed activities do not constitute implementation of the project under assessment by the EPA.

The EMA framework will not allow commencement/implementation of a project currently under assessment by the EPA.

##### **3.1.2 Indigenous Land Use Agreements**

A number of Indigenous Land Use Agreements (ILUAs) have been executed between the State Government and various Native Title groups. As part of these agreements with the Government, mining tenements within ILUA areas have a Heritage Agreement condition placed on the tenement requiring tenement holders to enter into a Heritage Agreement with the relevant ILUA group before any rights can be exercised.

If an EMA Notice is lodged on a tenement with a Heritage Agreement condition imposed, applicants will need to provide a declaration that they have entered into a Heritage Agreement with the relevant ILUA group, with a statutory declaration attached to the EMA Notice as evidence, prior to the notice being served.



### **3.1.3 Miscellaneous Licences**

Miscellaneous licences are granted for specific purposes (i.e. water exploration), and therefore, prior to submitting an EMA Notice on a miscellaneous licence applicants will need to provide confirmation that they have reviewed the licence's purpose and proposed activities are consistent with the licence's purpose.

## **4. Duration of an EMA Notice**

Once an EMA Notice is lodged, the authorisation to undertake eligible activities is valid for a two year period. If activities have not commenced within the two year period a new EMA Notice will need to be lodged prior to commencement of activities.

## **5. Rehabilitation timeframe**

A standard condition issued with the EMA Notice will require all activities be rehabilitated within 6 months of completion of the activity, unless otherwise approved by the Department.

This, together with the requirement to complete all backfilling and rehabilitation works prior to obtaining a new EMA Notice will ensure that rehabilitation works are prioritised and occur relatively soon after an eligible activity is undertaken.

## **6. EMA Notices of Completion**

When activities under an EMA Notice have been completed or when the EMA expires, a notice of completion must be submitted to the Minister. An EMA Notice of Completion must be submitted prior to a new EMA Notice being lodged on a tenement.

The Mining Regulations will specify the manner and timeframe in which the completion notice must be given.

The Department proposes that notices of completion must be lodged within six months of undertaking activities, via the Department's website. 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.

The Department would expect a notice of completion to include:

- Details of activities undertaken;
- Tonnage disturbed (if applicable);
- Exact location of activities;
- Details of rehabilitation works completed; and
- Supporting photos demonstrating that rehabilitation works have been completed in accordance with standard conditions.

## **7. Regulation of EMAs**

The Department considers the regulatory powers and requirements contained within the Mining Act, and proposed in the Amendment Act, are appropriate to regulate the EMA framework. For example, tenement holders undertaking eligible activities through EMA Notices, like any other form of activity approval available within the Mining Act, will be subject to conditions and compliance activities will be undertaken to verify that these conditions are being met.

## **8. Inter-relationship with other approvals**

Under the Mining Act exploration and prospecting licences have a 1000 tonne and 500 tonne limit respectively. When the tonnage limit will be exceeded by the proposed activities, an excess tonnage application must be submitted to DMIRS and approved prior to activities being undertaken. Applicants will need to have the required tonnage capability within their tenement in order to undertake works authorised under an EMA Notice. In instances where a tenement does not have the required tonnage an application, the lodgement system will prompt the applicant to submit a request for excess tonnage. Activities authorised under an EMA Notice cannot commence until excess tonnage is granted.

An EMA Notice does not negate an applicant's existing obligations under the Mining Act, *Mining Rehabilitation Fund Act 2012*, *Work Health and Safety Act 2020*, *Environmental Protection Act 1986* or any other applicable legislation. Similarly, the requirement to obtain approvals under other legislation does not necessarily preclude the utilisation of the EMA framework where the activities or surrounding factors are adequately regulated by other legislation.

The introduction of the EMA framework will not impact upon existing approved PoWs or mining proposals. The EMA framework is available as an optional means to undertake certain activities of minimal disturbance that meet the EMA criteria. It does not prevent or restrict the undertaking of activities that have been granted in a previous approval, nor does it prevent eligible activities from being applied for via a PoW or MDCP.

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