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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 88 per cent of the State's record mineral and energy workforce employment – currently 140,941 workers[1].

Despite the uncertainty caused by COVID-19, WA's mineral and petroleum industry reported a record value of $172 billion in 2019-20.[2] Iron ore is currently the State's most valuable commodity at $103 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at $37 billion, with gold third at $16 billion.

The value of royalties received from the sector totalled $9.3 billion in 2019-20,[3] accounting for 28.8 per cent of general government revenue.[4] Now accounting for 47 per cent of the State's total industry Gross Value Added,[5] the sector is a significant contributor to local, State and Australian economies.

Context

CME welcomes the opportunity to provide a submission on the proposed amendments to the *Mining Act 1978* (the Mining Act) detailed within the Consultation Summary and *Streamlining (Mining Amendment) Bill 2021* (the Bill) released by the Department of Mines, Industry Regulation and Safety (DMIRS) on 3 May 2021.

The Bill proposes 'streamlining' amendments to the Mining Act which are intended to improve the efficiency of assessments and approvals, and support risk-based and outcomes-focused regulation. Proposed amendments include:

- Introduction of Low Impact Notifications.
- Introduction of a single Approvals Statement across multiple tenements.
- Introduction of a Mining Development and Closure Plan (MDCP) for the application process in place of submission of separate Mining Proposals and Mine Closure Plans.[6]

Additionally, to assist with the consultation process, CME notes DMIRS subsequently provided updated information on 3 June 2021 to clarify requirements and DMIRS's altered positions relating to:

- Transitional arrangements.
- MDCPs.
- Interactions with Aboriginal heritage legislation.

These clarifications have been considered as part of this submission however, in the absence of revised drafting, specific comments on the Bill as provided in May 2021 have been included in subsequent sections.

[1] Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

[2] Government of Western Australia, *Latest statistics release: Mineral and petroleum review 2019-20*, Department of Mines, Industry Regulation and Safety, 25 September 2020.

[3] Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

[4] Government of Western Australia, 2019-20 *Annual report on State finances*, Department of Treasury, 25 September 2020.

[5] Cassells, R. *et al*, *BCEC Quarterly economic commentary*, Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

[6] Note: DMIRS has clarified this does not alter the requirement for a separate Mine Closure Plan and that they will still be required to be maintained as separate standalone documents updated and resubmitted at agreed intervals.

Summary position

CME supports the reduction and simplification of government regulation. CME broadly supports the Bill's proposed objectives. However, CME does not believe the Bill (in its current form) will achieve streamlining outcomes in the priority or immediacy required. CME does not believe the current Bill is ambitious. CME considers the majority of outcomes proposed by the Bill can be achieved through alternative and more immediate means including administrative, policy, cultural, or procedural reforms. This is supported by independent legal opinion. Based on the above, CME recommends:

- **The remit for reform be broadened to include opportunities for meaningful and more immediate streamlining of approvals under the Mining Act.**
- **DMIRS undertake proper consultation to prioritise effective, practicable, and targeted streamlining opportunities (administrative and legislative) leveraging off the extensive identification of key issues and opportunities already undertaken under Streamline WA, including express removal of duplication with other legislation.**

Where streamlining outcomes cannot be achieved solely through administrative and non-legislative reforms, CME supports legislative amendments only to the extent that they do not impede broader regulatory streamlining objectives.

This submission is structured to respond to the objectives of the Bill, provide feedback on issues identified with the proposed drafting (as released for consultation) and recommends alternative options to deliver more immediate streamlining benefits.

Unique reform opportunity

Immediate streamlining outcomes needed to support strong economic growth

CME understands the Bill was prepared and drafted in the context of stimulating post-COVID recovery of the resources sector, and despite the Bill's "streamlining" title, the Bill is not directly linked to Streamline WA or intended to deliver on the 'whole of government' reform objectives of the Streamline WA program. In CME's view, the narrow scope of the Bill represents a missed opportunity for immediate, achievable streamlining benefits and high economic value regulatory reform.

The proposed reforms demonstrate a fundamental disconnect with the key issues experienced by industry users of the Mining Act. Prior to the Bill's circulation for public comment, no preliminary consultation was undertaken with industry to explore the key issues and priority reform opportunities through either an issues or discussion paper, nor has a decision regulatory impact statement been released to support the reforms proposed in the Bill.[7] This lack of prioritised needs assessment and prior issues identification – including not leveraging relevant outputs from the government's Streamline WA program – makes it challenging to discern whether the proposed changes represent the 'highest and best' allocation of the government's discretionary reform effort. While this narrow approach may have been justifiable during the initial phase of the COVID pandemic, given the stronger than anticipated economic recovery over the past 12 months and optimistic forward outlook, it is fundamentally important that any streamlining initiative prioritises the most effective, practicable, and targeted reforms – through both legislative and more immediate administrative (non-legislative) means.

Consistent with the government's Streamline WA initiative, proposed streamlining reforms by agencies should "accelerate action to streamline approval processes" and relevantly "address whole of government issues" by considering the corresponding jurisdiction and impact to other regulatory agencies – which is of particular relevance now given recent and parallel reforms in progress – namely the *Environmental Protection Act 1986* (EP Act) (WA). The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*, Aboriginal Cultural Heritage Bill (WA) and other 'streamlining' bills initially proposed as COVID recovery initiatives.

[7] Government of Western Australia, *Better regulation program – Guidance note 2: Preparing a Consultation RIS and Decision RIS*, Department of Treasury, March 2020.

Effective streamlining reforms have never been more acutely needed to deliver meaningful efficiencies to both industry and government in the near-term to capitalise on WA's strong economic position and to secure the $140 billion pipeline of mining and resources projects on the horizon. In the main, the outcomes of the reforms proposed in the Bill are not anticipated to be realised until at least two years into the future – which is simply too late. Furthermore, as referenced above, it is not possible to discern the potential streamlining benefit of some of the reforms as the thresholds for low impact notifications (for example) are not proposed to be defined until years later – again, that is simply too late.

Accelerating assessments and associated approvals through meaningful streamlining initiatives will enable industry to capitalise on higher than expected commodity prices, yielding higher government revenue, before prices cyclically moderate overtime. For example:[8]

- Royalties generated from WA resource exports represents 29% of gross state revenue (2019-20).
- The resources sector is the largest contributor to payroll tax of all industries in WA.
- The resources sector is a material contributor to transfer duty revenue via high value commercial transactions of mining tenements.
- A price movement of $US1 per tonne for iron ore will impact the State's annual royalty income by around $81 million.

CME strongly recommends the remit for reform be broadened to include opportunities for meaningful and more immediate streamlining of the Mining Act including express removal of duplication with other legislation. Reforms should be proposed cognisant of the wider Streamline WA remit, including other government reform initiatives in progress for other relevant legislation and, if necessary, staged so that real benefits to government and industry can be achieved progressively during this current term of government.

Long-standing issues (and opportunities) need to be addressed

In CME's view, the proposed streamlining amendments to the Mining Act do not in isolation achieve meaningful efficiency benefits. There are more immediate opportunities to reduce regulatory duplication and address long-standing, well-understood issues experienced by both industry and government regulators.

Long-standing issues which need to be addressed as priorities include:

- Duplication of environmental assessment and compliance under the Mining Act and EP Act.
- Lack of flexibility of programme of work (PoW) approvals (IT) systems, and poor integration across corresponding IT systems.
- Inaccurate Landgate data informing DMIRS's assessments.
- Lack of clarity of compliance requirements under Mining Proposals and Mine Closure Plans.
- Lengthy end-to-end approval timeframes masked by inconsistent performance reporting.
- Lack of public and proponent transparency on certain documents and key information.

These priorities are explored further in this submission, with the intent to bring forward effective, practicable, and targeted streamlining opportunities.

The Consultation Summary published in conjunction with the Bill is considered too high level and does not adequately explain the key issues the proposed reforms intended to address, how they will operate in practice, and in turn what efficiencies will result for proponents or the regulator. The Consultation Summary does not explore the potential and implications for other reform proposals or seek feedback from the wider regulatory community on practicable reform – be it legislative, policy, or administrative. CME also understands no detailed consultation occurred with other related regulatory agencies prior to release of the proposed reforms, which is entirely inconsistent with the stated objectives of the 'whole of government' Streamline WA program.

Subsequently released information shared by DMIRS during the consultation period, while providing some much-needed clarification, highlights fundamental issues with the applied process for drafting and lack of wider regulatory consultation.

CME strongly recommends DMIRS undertake proper consultation to prioritise effective, practicable, and targeted streamlining opportunities – including both administrative and legislative – leveraging

[8] Government of Western Australia, *2020-21 Pre-election financial projections statement*, Department of Treasury, February 2021.

off the extensive identification of key issues and opportunities already undertaken under Streamline WA.

Prioritised policy, administrative and IT system changes can be made now to deliver near-term streamlining benefits for low impact activities, improved clarity on compliance requirements and greater transparency. These streamlining measures could in the longer term be strengthened (where needed) through subsequent Act amendments, ensuring the opportunity is taken to clarify regulatory jurisdiction and remove unnecessary duplication when 'opening up' related Acts.

Effective, practicable, and targeted streamlining opportunities

CME supports streamlining reforms to achieve:

- Clear and common understanding of the regulatory remit for environment.
- Streamlined assessment and approval processes implementing a risk-based approach, supported by efficient IT systems, transparent procedures, and quality data.
- Clearly defined and transparent outcome-focused compliance requirements which facilitate adaptive management.

Numerous effective, practicable, and targeted streamlining opportunities exist, including policy, administrative and legislative reforms, to deliver reform objectives across short and longer-term timeframes (yet still achievable within this term of government).

CME considers the majority of desired streamlining outcomes can be achieved through alternative means including administrative, policy, cultural or procedural reforms. This is supported by independent legal opinion. Administrative, policy, and procedural reforms should be prioritised in the first instance to address key issues with assessments and approvals under the Mining Act with legislative amendments adopted only when necessary, such as to address fundamental issues of jurisdiction and/or achieve improvements impracticable through non-legislative reforms.

Recommendations

CME makes the following recommendations to address key concerns and priorities for streamlining reforms to the Mining Act:

Broaden the remit for reform to include opportunities for meaningfully streamlining the Mining Act

- Undertake wholesome consultation on key issues, exploring reform proposals which are both administrative and legislative for effective, practicable, and targeted streamlining opportunities, leveraging off the extensive identification of key issues and opportunities already undertaken under Streamline WA.
- Clarify the regulatory remit of DMIRS and the Mining Act in respect of environmental matters to prevent duplication with the EP Act. This would ensure the Mining Act is used to regulate only those environmental matters not already assessed or approved under the EP Act, focusing purely on the specific environmental regulatory gap. This could be achieved in the short-term through priority revision of guidance (e.g. Mining Proposals), and in corresponding Act amendments.

Streamline low-risk activity approvals

- Manage low impact activities and the manner in which they must be conducted via standardised tenement conditions to enable tenements to be usable at grant and promote productive use and rapid turnover of land. This could be achieved in the short-term without legislative change.
- Consult with the Department of Water and Environmental Regulation (DWER) as a matter of priority and obtain specific legal advice as to the application of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (EP Clearing Regulations) and whether amendments may be required to expressly clarify the intent to retain the exemption for an "authority under the *Mining Act 1978*".
- Update DMIRS IT systems and administrative procedures to triage automatically the assessment of low-risk activities and implement a risk-based, tiered approach to spatial PoW (PoW-S) applications.

Streamline PoW approvals

- Revise the PoW process to remove unnecessary prescription and implement a tiered, risk-based system approach.
- Develop technically-focussed guidance on PoW applications and approvals in consultation with industry.
- Update the PoW-S system to allow amendments to applications.
- Update the PoW-S system to allow submission of applications for miscellaneous licences.
- Amend DMIRS IT systems and internal procedures for PoW applications to remove the regulatory duplication of heritage approvals.

Implement outcome-based tenement conditions

- Implement improvements to the drafting of tenement conditions to reflect an outcome-based approach (rather than referencing application documents in their entirety which creates unnecessary compliance burden and ambiguity). This could be achieved immediately by policy.

Improve public and proponent transparency

- Improve DMIRS's online system to enhance public transparency of tenement conditions including extraction reports of conditions across tenements in a user-friendly interface, and public provision of other documents or information currently not in the public domain.

Ensure effective, practicable transition

- Amend any transitional arrangements to ensure current approvals are maintained for the life of the tenement.

Responses to proposed amendments

CME has consulted extensively with its members to inform its submission in response to the proposed amendments to the Mining Act. This submission firstly provides high-level comments on proposed reforms, explores key issues, and discusses short-term and long-term reform opportunities to address these key issues. Specific, detailed responses on the draft Bill are captured in Appendix II: Detailed responses to proposed amendments.

1. Low Impact Notifications

Under the Bill, DMIRS propose to introduce Low Impact Notifications (LIN). CME understands the objective of introducing LIN is to automate authorisation of low-risk activities to enable DMIRS assessing staff to focus on higher risk activities.

In principle, CME supports the objective to streamline authorisation of low-risk activities and the redirection of DMIRS resources to the proactive and efficient delivery of core business and regulating industry in the management of higher risk activities.

However, the proposed LIN framework does not include detail on the application and approvals process, eligibility criteria or thresholds for low impact activities, or proposed standard conditions of approval. Detail of the process is proposed to be prescribed in regulations and subject to future public consultation – but only after the Bill achieved passage through Parliament. Without this clarity, or even a basic indication of where thresholds are likely to be, it is not possible to reasonably discern the regulatory streamlining effectiveness of the proposal and potential benefits to both DMIRS and industry.

To date, the examples provided verbally at DMIRS public consultation briefing sessions have included hand augering and soil sampling – neither of which involves clearing or use of mechanised equipment. If these are likely to be the types of activities that will be eligible for a LIN following gazettal of necessary regulations, it is highly unlikely that CME members will be able to utilise this function, despite CME members regularly undertaking activities what would be considered “low impact” exploration activities. Additionally, its implied new approval requirements will be necessary for activities that can currently be conducted without a PoW.

Critically, it is also not possible to discern how LINs would interact with the EP Clearing Regulations as it is not clear whether there would be an approval of LINs and how that aligns with the EP Clearing Regulations requirement for ‘an authority under the Mining Act’. The interlinkage between the proposed amendments and the EP Act and, in particular, the EP Clearing Regulations, is key. CME has been advised by DMIRS that no specific consultation has occurred with DWER in respect of the draft Bill, including regarding the interaction of the proposed amendments and the existing clearing exemptions (regulation 5, items 20 and 25 of the EP Clearing Regulations) related to authorities under the Mining Act. This presents a significant risk for industry.

CME strongly recommends DMIRS consults with DWER as a matter of priority (and prior to introducing any Bill into Parliament) **including obtaining specific legal advice as to the application of the EP Clearing Regulations and whether amendments may be required to expressly clarify the intent to retain the exemption for an “authority under the *Mining Act 1978*”.**

CME supports a framework which facilitates the expedited approval of lower risk activities and the use of standard, pre-known approval conditions. However, the proposed amendments do not address key issues experienced by industry under the current approval regime, including the lack of flexibility of approval systems, and the inaccuracy of data systems (i.e. Landgate) used to inform assessment of PoW and Mining Proposal applications.

1.1 Key issues

The following key issues experienced by the resources industry as users of the Mining Act are long-standing and well-known. Opportunities currently exist for addressing these issues through administrative and other non-legislative reforms to deliver efficiency gains for industry and regulators in the near-term.

CME are committed to working with government to deliver on mutual reform objectives and realise material regulatory streamlining benefits, while maintaining good environmental outcomes, as efficiently as possible.

1.1.1 Lack of flexibility of approval systems

DMIRS internal IT systems and administrative procedures unnecessarily constrain a proponent’s ability to amend an approved PoW or a PoW application in progress. Proponents are currently required to submit a new PoW application where minor amendments to the content of an approved PoW are required to reflect updated

survey information, changes in equipment, or modifications to the disturbance footprint (including reduced disturbance). Where these changes are required for a PoW application in progress, withdrawal and resubmission of a whole new PoW application are required.

For example, a proponent is required to submit an entirely new PoW application to amend the approved disturbance footprint to avoid newly identified heritage sites or make last-minute changes to the drilling equipment to be used, even when the total approved clearing limit is unchanged or reduced.

The lack of flexibility in the PoW IT systems and DMIRS's internal procedures places an unnecessary administrative burden on proponents and government and does not represent risk-based and outcome-focused regulation. Importantly, these issues can be addressed through non-legislative reform to DMIRS internal IT systems and administrative procedures.

1.1.2 Inaccurate Landgate data informing assessments

Landgate's Spatial Cadastral Database is currently used by DMIRS to inform the assessment of impacts of activities proposed in PoWs and Mining Proposal applications. Industry has consistently advocated for the revision and update of the Landgate Database to address long-standing issues with data inaccuracy which needlessly impacts project approvals.

Example 1: The Landgate Database contains location data for historical towns which no longer exist, as confirmed by ground-truthing. Nevertheless, when a proponent submits a PoW application which intersects with the area of a historical town marked in the Landgate Database, the proponent is required to needlessly amend planned works to avoid a town that does not exist. This data and IT constraint effectively sterilises whole areas of exploration licences.

Example 2: Proponents are required to ensure polygons submitted for proposed disturbance areas do not intersect with rail infrastructure or rail tenure. However, the Landgate Database only provides data for rail infrastructure, not rail tenure (note: the footprint of the two are not always the same). Consequently, it is not possible for proponents to submit a PoW application which is compliant with DMIRS's procedural requirements due to insufficient data.

Example 3: The use of existing access tracks is highly preferable to reduce the environmental impact associated with the need for additional clearing of native vegetation, and consequently minimise the total cleared area accounted for by a proponent. However, due to the inadequate access track data used by DMIRS, proponents are forced to obtain clearing approval for the use and maintenance of existing tracks. Proponents are consequently required to contribute funds to the Mining Rehabilitation Fund for the original clearing (for which they are not the responsible party) and are made responsible for the eventual rehabilitation of the track.

Similar issues with other inaccurate datasets such as heritage locations and environmental features also exist.

The use of inaccurate data to support assessment of PoW and Mining Proposal applications results in unnecessary delays to approvals, additional costs, and added administrative burden for proponents and regulators. While it is acknowledged that DMIRS has no responsibility or direct influence over Landgate's data, CME considers there to be a clear benefit to DMIRS engaging in a process to improve the quality of this vital source data – potentially under the auspices of Streamline WA.

1.2 Recommended solutions

The following reforms are recommended to address the aforementioned key issues. These reforms are proposed as a package to be implemented in a staged approach to deliver streamlining benefits in the near-term while more fulsome, fundamental regulatory streamlining is progressed across the longer-term.

1.2.1 Clarify environmental regulatory remit and prevent duplicative regulation

- *Deliver streamlining benefits through administrative reforms in the near-term and legislative amendments in the longer-term*

Environmental impacts associated with mining activities are expressly regulated under the EP Act, the State's primary environmental legislation. The Mining Act clearly contemplates under section 6(1) that the Act is to be read and construed subject to the EP Act, to the intent that if a provision of the Mining Act is inconsistent with a provision of the EP Act, the EP Act shall prevail. Hence, any regulation of environmental impacts through the Mining Act should clearly and expressly only address any regulatory gap (to the extent that it exists) and not duplicate regulation already enforced through the EP Act.

In particular, there is regulatory duplication for mining activities that have been assessed and authorised under Part IV of the EP Act by Ministerial Statement following EPA assessment of key environmental factors (including clearing). Despite this assessment, these projects are still subject to environmental assessment

under the Mining Act, in respect of a PoW or Mining Proposal, prior to ground disturbing works including over-assessment of minor details that do not alter environmental outcomes.

Such unnecessary regulatory duplication results in significant additional regulatory burden to proponents, increased cost, and extended approval timeframes for no improvement in environment outcomes. Furthermore, this duplication diverts DMIRS resources from the delivery of core business and the management of higher risk activities that are not already being regulated by other agencies (such as progressive rehabilitation of native vegetation).

CME recommends the regulatory remit of DMIRS and the Mining Act be clarified in respect of environmental matters to prevent duplication with the EP Act, including that where mining activities have been assessed and approved under the EP Act that those activities are not subject to further environmental assessment and regulation by DMIRS.

The revision of DMIRS guidance documents can deliver on this objective in the near-term.

1.2.2 Standard tenement conditions for low impact activity exemptions

- *Administrative reforms delivering streamlining benefits in the near-term*

Where the regulation of clearing for exploration and mining activities is to apply under the Mining Act, amendments to existing processes are needed to improve regulatory efficiency and reduce administrative burden for proponents and DMIRS.

Establishing thresholds and controls for low impact activities in standardised tenement conditions applied on grant of tenure is a simple and effective means to regulate low impact activities. Standard tenement conditions can be developed which limit activities and the manner in which they are to be conducted to that determined to be 'low impact' (potentially including a total clearing limit) within a development envelope (i.e. mining tenement). Standard tenement conditions already exist requiring annual compliance reporting, under which the total area cleared against the approved clearing limit can be reported by the proponent and compliance against all thresholds and related conditions would be confirmed.

This approach puts the onus on the proponent to ensure their activities comply with their tenement conditions, a current standard process. Should a proponent wish to precautionarily refer their proposed activities for confirmation of compliance with the set thresholds and controls for low-risk activities, this could be achieved through an automated LIN process. This automated approval process would not require legislative amendments to implement, merely changes to administrative procedures and IT systems.

Further, should a proponent need to undertake activities beyond that authorised as low-risk, low impact activities, the proponent would need to apply for and obtain a PoW as per current requirements. This tiered approach is illustrated in Figure 1.

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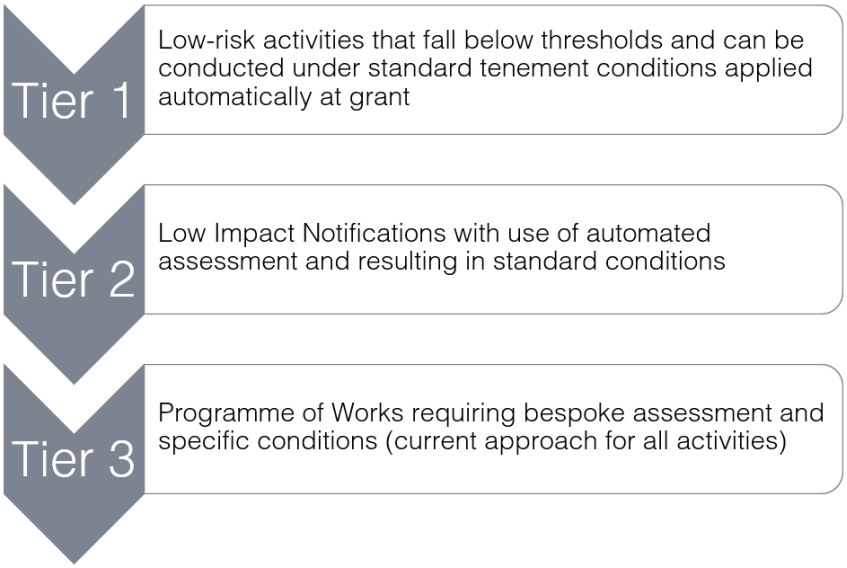

Figure 1: Tiered regulatory framework for low impact activities.

This tiered, risk-based, and outcome-focused approach would provide proponents with the necessary flexibility to manage disturbance and activities within approved limits to optimise operational efficiency and ensure good environmental outcomes. This approach also significantly reduces the administrative burden on regulators and proponents by enabling exploration licences to be usable immediately upon grant for those low risk activities that fall below specified thresholds and hence can be managed through well understood controls and standard conditions.

Consistent with the objectives of the Mining Act, this would promote the productive use and active turnover of exploration-related tenements (use it or lose it model).

Similar models have proven highly effective in other comparable jurisdictions. For example, in Queensland, where disturbance to native vegetation is regulated under the *Environmental Protection Act 1994* (Qld), a 'standard' Environmental Authority can be instantly granted, providing an automatic approval for low risk activities with a set of pre-determined, standard conditions. These conditions provide the low impact thresholds for the approved activity, and include for example:

- A total clearing limit.
- Exclusion of activities from within environmentally sensitive areas.
- Restriction of activities required to be approved under higher-order approvals (such as a PoW or Mining Proposal as relevant in WA).

CME recommends managing low impact activities and the manner in which they must be conducted via standardised tenement conditions to enable tenements to be usable at grant and promote productive use and rapid turnover of land.

The maintenance of current exemptions under the EP Clearing Regulations is a critical consideration for any reform of approvals under the Mining Act. Under regulation 5 of the EP Clearing Regulations, exemptions exist for clearing approvals for low impact activities (item 20) and prospecting or exploration clearing (item 25). Both these exemptions refer to clearing 'under an authority granted under the Mining Act'. While the EP Act and EP Clearing Regulations do not specifically define what such an 'authority' is, it is generally considered by DMIRS, and consequently industry, as being a further authority, such as a Notice of Intent (NOI), PoW, or Mining Proposal. However, clause 2(3)(a) of Schedule 1 of the EP Clearing Regulations would give support to a mining tenement being an 'authority'. As such, the grant of a mining tenement could be considered an 'authority' under the Mining Act and so the inclusion of low impact activity exemptions under a mining tenement condition could potentially maintain existing clearing exemptions under the EP Act.

Regardless, to avoid any legal uncertainty and to clearly articulate the regulatory intent, **CME recommends the EP Clearing Regulations be clarified to confirm the interpretation of an 'authority' and the maintenance of current exemptions under the EP Clearing Regulations for low impact activities (item 20) and clearing under the Mining Act (item 25).**

1.2.3 Improve flexibility of the PoW approval process

- *Administrative reforms delivering streamlining benefits in the near-term*

Improvements to the flexibility of the PoW process are necessary to deliver practicable and sustainable regulatory streamlining outcomes. These improvements can be facilitated through non-legislative amendments to DMIRS internal IT systems and administrative procedures.

Updates to DMIRS IT systems and administrative procedures can deliver considerable efficiency gains for spatial PoWs through the automation of the assessment of applications against pre-defined criteria and subsequent streamlined assessment of low-risk activities. This process would facilitate a 'triage' process for applications, whereby PoW-S applications are submitted online and undergo an initial, automatic assessment against pre-defined criteria, applications are then categorised as either low, medium, or high risk, and subsequently enter different assessment 'streams' based on risk whereby low risk applications have a quick turnaround and standardised conditions from a known conditions bank.

This approach effectively delivers on the intent of the LIN framework and can be implemented in the short-term without legislative amendments. Public consultation would be required on the pre-defined criteria used to categorise assessments based on risk and could be defined in guidance before being embedded in the PoW-S IT system. Again, consideration would need to be given to ensure exemptions under the EP Clearing Regulations would still apply.

CME recommends update to DMIRS IT systems and administrative procedures to automate assessment of low-risk activities and implement a risk-based approach to PoW-S applications.

Another quick efficiency improvement can be delivered through amendment to DMIRS's PoW approvals procedures to remove prescription and reflect a risk-based, outcome-focused approach.

Over time PoW applications have evolved to require more specific and prescriptive detail, including for example the number of sumps and pads, the length and width of a track, or the specific drill rig type to be used. None of this prescription is required by the Act. Any slight change to the project design, including changes to equipment, requires a new PoW application to be submitted and approved prior to commencing works.

The overly prescriptive nature of PoW application requirements, and consequently the PoW approval, unnecessarily constrains proponents in the implementation of approved projects, and runs contrary to best practice environmental adaptive management frameworks. PoW approvals should focus on a risk-based, outcome-focused approach, with conditions to regulate the environmental outcome as a whole. Changes to project design and equipment which are not material to the environmental outcome should not require re-approval.

CME recommends revision of the PoW approvals process to remove unnecessary prescription and implement a risk-based, outcome-focused approach.

Current IT system limitations that prohibit minor amendments to an application have not been resolved despite this issue being recognised for some years and based on earlier advice from DMIRS, contributes to an almost 50% withdrawal and re-submission rate for PoWs.

CME recommends the PoW-S system be updated to allow amendments to applications, rather than force withdrawal and resubmission.

Additionally, a lack of functionality in the PoW-S system prohibits the lodgement of PoW-S applications for miscellaneous licences. This presents another simple opportunity for short-term streamlining gains for industry and regulators through non-legislative reforms.

CME recommends the PoW-S system be updated to allow submission of applications for miscellaneous licences.

DMIRS's policy for treatment of heritage and section 18 approvals (now enacted through the PoW-S system) also creates administrative inefficiency and should be removed. It remains the proponent's responsibility to address heritage (and other) regulatory requirements and DMIRS should not artificially introduce "gates" or "holds" for other regulatory processes outside its remit (note: *Native Title Act 1993* processes are clearly an exemption as these are fundamental to tenure-related processes and Future Act requirements).

CME recommends DMIRS IT systems and internal procedures for PoW applications be amended to remove the regulatory duplication of heritage approvals.

CME and its members have previously raised the need for published technical guidance for PoWs with representatives from DMIRS. Ensuring clarity of requirements through provision of technically-focused guidance would reduce the amount of re-work required by both industry and government, leading to an overall improvement in application quality and more timely assessment. Additionally, it would promote greater consistency by DMIRS personnel, further reducing re-work and aiding industry understanding of requirements.

Of particular importance for inclusion in guidance are the following:

- PoW application requirements – what must be included in an application?
- Navigation of the PoW-S system – how do I apply?
- An assessment checklist for PoW applicants.
- Practical compliance guidance for standard tenement conditions.
- Rehabilitation guidance clarifying timeframes, triggers, and the process for applying for an extension.
- Requirements for Exploration Environmental Management Plans and Annual Exploration Environmental Reports.
- Renewal and amendment process for PoWs.

CME is aware of earlier draft versions of PoW guidance that were not formally published for consultation or finalised yet have been used informally from time to time to assist some applicants prepare PoW submissions.

CME recommends technically-focussed guidance for PoW applications and approvals be developed by DMIRS in consultation with industry proponents.

2. Approvals Statement

Under the Bill, DMIRS propose to introduce an Approvals Statement. CME understands the objective of introducing an Approvals Statement is to improve public transparency and clarify compliance requirements for proponents and regulators by consolidating approved activities and relevant conditions onto a single document.

CME understands the Approvals Statement will be similar in form and content to an approval letter which is currently issued upon approval of a Mining Proposal. CME also understands an Approvals Statement is intended to replicate tenement conditions relevant to environmental management of a mining activity and will include conditions on key activity characteristics (e.g. tailings storage facility design and material type, waste rock dump height and materials) drawn from the proposed MDCP, with an focus on outcome-based conditions.

Additionally, CME understands DMIRS intends not to continue applying a standard tenement condition to tenements with an approved Mining Proposal(s) of the form,

> "*The construction and operation of the project and measures to protect the environment to be carried out in accordance with the document titled:*
>
> *[] Registration Title [] dated [] signed by [] and retained on Department of Mines, Industry Regulation and Safety (DMIRS) file no. [].*
>
> *Where a difference exists between the above document(s) and the following conditions, then the following conditions shall prevail."*

but will instead apply a standard tenement condition to comply with the Approvals Statement.

DMIRS has highlighted that by adopting this approach only the requirements in the Approvals Statement will need to be complied with, not the entire contents of the MDCP. DMIRS has highlighted this as a compliance benefit for proponents over the current condition model which requires proponents to comply with a Mining Proposal in its entirety.

CME supports the objective to improve public transparency and provide greater legal certainty for proponents regarding conditions of approval. However, the proposed amendments do not address the fundamental issue of regulatory duplication, nor are amendments to the Mining Act necessary to achieve the stated desired outcomes which can instead be realised in the short term within the existing framework.

2.1 Key issues

The following key issues are experienced by the resources industry as users of the Mining Act. Opportunities currently exist for addressing these issues through administrative and other non-legislative reforms to deliver efficiency gains for industry and regulators in the near-term.

CME are committed to working with government to deliver on mutual reform objectives and realise material regulatory streamlining benefits, while maintaining good environmental outcomes, as efficiently as possible.

2.1.1 Duplication of clearing assessment / approval

Where proponents have an existing Ministerial Statement (which permits a development envelope to exist across multiple tenements), CME members are currently required to seek amendments to Mining Proposals to shift activities across tenement boundaries even when these have no different environmental impact and can still be managed entirely within the existing EP Act clearing constraints, development envelopes and other environmental conditions.

2.1.2 Lack of clarity of compliance requirements

Currently, conditions of approval for a mining project are not captured in any one place, instead they exist under tenement conditions on individual tenements (of which there can be several) and are captured in the detail of Mining Proposals and associated Mine Closure Plans (of which there can also be several). Furthermore, there exists a lack of clarity for proponents as to:

- What constitutes an approval condition in an approved Mining Proposal and Mine Closure Plan given the documents in their entirety are referenced in tenement conditions, and
- How these change or are superseded by Mining Proposal revisions.

The lack of user-friendliness of DMIRS IT systems further compounds the issue of compliance clarity and negatively impacts perceptions of transparency of approvals – particularly for members of the public who may infrequently access these IT systems. It is not easy for proponents or the public to navigate DMIRS IT systems

to access relevant conditions for approved mining activities across multiple tenements, and systems lack the core functionality to view or generate outputs which consolidates all conditions of approval for a mining project.

2.2 Recommended solutions

The following reforms are recommended to fundamentally address the aforementioned key issues. These reforms are proposed as a package to be implemented in a staged approach to deliver streamlining benefits in the near-term while more fulsome, fundamental regulatory streamlining is progressed across the longer-term.

2.2.1 Clarify environmental regulatory remit and prevent duplicative regulation

- *Deliver streamlining benefits through administrative reforms in the near-term and legislative amendments in the longer-term*

Refer to **Section 1.2.1** *Clarify environmental regulatory remit and prevent duplicative regulation*.

The Mining Act is fundamentally tenure-focused, whereby the ultimate penalty is forfeiture of tenure. As such, to be able to approve clearing for certain activities and monitor compliance with approved limits, limits by activity must be linked to individual tenements. Approvals Statements will not consolidate total limits across multiple tenements and consequently will not address this key issue of flexibility for proponents to effectively manage disturbance within a development envelope. It is important to note that clearing of native vegetation is regulated by the EP Act but in a manner that allows flexibility across mining tenements within environmental constraints – unlike the hectare limits per tenement applied by DMIRS.

CME recommends the Mining Act be amended to clarify the jurisdiction of DMIRS and the Mining Act with regards to environmental matters, such that where proponents are operating under approvals under the EP Act that these aspects are expressly out of DMIRS's regulatory scope. In particular, DMIRS should not constrain activities by hectare by tenement in the current manner as this removes crucial flexibility for proponents operating across multiple tenements.

The revision of DMIRS guidance documents can deliver on this objective in the near-term.

2.2.2 Outcome-based tenement conditions

- *Administrative reforms delivering streamlining benefits in the near-term*

Currently, under the Mining Act conditions may be imposed for the purpose of preventing or reducing, or making good, injury to the land in respect of which a tenement is sort or granted, or to condition the use of ground disturbing equipment in accordance with an approved PoW or Mining Proposal. As such, legislative amendments are not required for DMIRS to implement immediate improvements to the drafting of outcome-based tenement conditions to make clear the conditions of approval of a Mining Proposal and associated Mine Closure Plan.

The introduction of an Approvals Statement is therefore not necessary to achieve the objective of clarifying conditions of approval and implementing outcome-based tenement conditions.

Crucially, as DMIRS intends the Approvals Statement to mirror the content of the existing approvals letters, DMIRS officers already invest the time and effort to determine the most relevant aspects of Mining Proposals and Mine Closure Plans (including any relevant triggers for resubmission and amendments) and hence could already convert that information into tenement conditions rather than refer instead in the tenement condition to the Mining Proposal in its entirety. Hence, the majority of the stated benefits of the Approvals Statement could be immediately achieved without the need for Act amendments.

CME supports the immediate implementation of improvements to drafting of tenement conditions to reflect an outcome-based approach rather than referencing Mining Proposals in their entirety.

By providing this efficiency and clarification through improved administration immediately, further consultation on the appropriate scope and content of any further reforms (such as production of an Approvals Statement) could be properly assessed in consultation with other relevant government departments in order to resolve issues of jurisdictional duplication. Consequently, **CME does not support the implementation of an Approvals Statement as a priority at this stage**.

2.2.3 Defence against clerical errors in an Approvals Statement

- *Legislative reform recommended in the near-term*

Where the regulation of clearing for exploration and mining activities is to apply under the Mining Act and amendments implementing the Approvals Statement proposal remain, amendments are needed to ensure proponents are protected against the risk of forfeiture of tenure due to clerical errors in an Approvals Statement.

Section 103AN(5) of the Bill states "a condition recorded on an approvals statement has effect for all purposes as a condition to which the mining tenement is subject". This indicates that the Approvals Statement has legal standing, and as such non-compliance with the Approvals Statement results in forfeiture of tenure.

CME are concerned regarding the legal standing of an Approvals Statement and the risk of forfeiture of a mining tenement due to the potential for clerical errors made by DMIRS in replicating tenement conditions onto the Approvals Statement. Members' experience to date indicates a real risk of clerical errors, with approval letters being received from DMIRS with clerical errors in replicated tenement conditions. As these approval letters currently have no standing, these issues have not historically been raised with DMIRS.

CME recommends the Bill be amended to provide a defence for the proponent against forfeiture of tenure due to Departmental administrative or clerical errors in an Approvals Statement.

2.2.4 Administrative changes to improve public transparency

- *Administrative reforms delivering transparency benefits in the near-term*

Administrative changes to DMIRS's IT systems and internal procedures can be implemented immediately to deliver on the objective of improved public transparency of approvals.

CME recommends DMIRS's online system be improved to enhance public transparency of tenement conditions including extraction reports of conditions across tenements in a user-friendly interface.

DMIRS has also advised that Approvals Statements are required through an Act amendment to improve public transparency as the approval letters (on which the form and contents of an Approvals Statement will be mirrored) are not currently made publicly available by DMIRS. It is unclear however why options to make these letters (or their relevant contents) publicly available have not been investigated as an alternative to Act amendments – given the letters are based upon information contained within Mining Proposals and Mine Closure Plans, both of which are already made publicly available. If an appropriate option for public availability of this information was implemented this would address DMIRS's concerns regarding public transparency without requiring Act amendments.

3. Mining Development and Closure Proposal

Under the Bill, DMIRS propose to introduce a MDCP. CME understands the objective of introducing a MDCP is to reduce duplicative information required for Mining Proposals and Mine Closure Plans.

CME understands that MDCPs will replace Mining Proposals and will include additional information on closure outcomes. Mine Closure Plans will remain a separate planning document (not a compliance document that requires express "approval" from DMIRS prior to the commencement of any works). Mine Closure Plans will still be required to be submitted within three (3) years (or sooner) of an Approvals Statement being issued, and will be required to be maintained on an ongoing basis with the term of resubmission to be determined on a case-by-case basis.

The MDCP is also intended to provide greater legal clarity regarding compliance requirements for closure outcomes as the closure outcomes will need to be included in the MDCP and consequently can be reflected in the Approvals Statement.

The MDCP will be used by DMIRS to inform the impact assessment of proposed mining activities, and therefore conditions included on the Approvals Statement. CME understands there is not intended to be a condition on the Approvals Statement or a tenement condition which requires compliance with a referenced MDCP. CME also understands the Approvals Statement will be used to assess compliance of a mining project, not the MDCP. Where the scope or conditions of the Approvals Statement are required to be changed to align with proposed changes to mining operations, this will necessitate the submission of a new MDCP detailing the change.

In principle, CME supports the objective to remove duplicative information requirements and reduce unnecessary administrative burden for proponents and regulators. However, the proposed amendments do not address the fundamental issues of regulatory duplication or significant delays in the provision of feedback on submitted Mine Closure Plans.

It is also unclear how much effort (if any) will be saved through this measure given the high probability that much of the substance of a Mine Closure Plan will still need to be communicated to DMIRS assessing officers upfront as part of the MDCP process to illustrate how closure outcomes have been determined and why the proponent is of the view that they are acceptable. Additionally, CME notes that as the contents of the current Mining Proposals and Mine Closure Plans are entirely determined by DMIRS's guidelines, not the Act, the

level of duplication and the wording of tenement conditions are determined by DMIRS rather than determined (or constrained) by the Act.

CME also notes it has been difficult to assess the full impact of the MDCP proposed amendment given the lack of information available at the start of consultation about the MDCP and the (initial) confusion caused by needing to retain a separate Mine Closure Plan regardless of the introduction of the requirement for an MDCP.

For proponents that also undergo Part IV environmental impact assessment under the EP Act, it is generally the case that the proponent will be required to prepare a Mine Closure Plan upfront regardless of any DMIRS proposals to inform the EPA's process and any associated public consultation process, particularly in relation to the determination of any residual impacts and offset requirements. CME understands DMIRS has not consulted with DWER EPA Services or the EPA about the proposed changes for submission of Mine Closure Plans and the MDCP proposal. The lack of clarity as to how these two processes are intended to work has further complicated assessment of the MDCP proposed amendment.

CME recommends DMIRS consult with the EPA (and EPA Services) regarding changes affecting closure planning.

3.1 Key issues

The following key issues are experienced by the resources industry as users of the Mining Act. Opportunities currently exist for addressing these issues through administrative and other non-legislative reforms to deliver efficiency gains for industry and regulators in the near-term.

CME are committed to working with government to deliver on mutual reform objectives and realise material regulatory streamlining benefits, while maintaining good environmental outcomes, as efficiently as possible.

3.1.1 Duplication of environmental impact assessment under EP Act

Regulatory scope creep has resulted in the duplication of environmental impact assessment of mining operations under the Mining Act in addition to that required by the EP Act. Currently, proponents are required to provide baseline environmental survey information and environmental risk assessments to support Mining Proposal and Mine Closure Plan applications, the same information and assessment undertaken for approvals under the EP Act but reformatted to adhere to DMIRS templates.

As the State's primary environmental regulators, the environmental professionals within DWER and the EPA are well equipped to undertake environmental impact assessments as part of their core business model. The duplicative assessment of environmental impacts of mining projects under the Mining Act does not reflect an effective or efficient use of limited government resources, nor does it represent best practice regulation.

Although DMIRS has taken steps in recent years through updates to its Mining Proposal Guidelines to allow proponents to more clearly refer to other regulatory instruments so that DMIRS may recognise and align with other regulatory requirements (most notably through Ministerial Statements under Part IV and approvals under Part V of the EP Act, and *Rights in Water and Irrigation Act 1914* approvals), this process is unnecessarily administrative and still imposes costs (financial, time, compliance and other costs) on both government and proponents that can be avoided entirely, if the environmental jurisdiction of DMIRS is instead clarified.

An amendment could be included in the Mining Act to provide that Mining Proposals need not address environmental matters for activities subject to EP Act approvals.

3.1.2 Lengthy approval timeframes

The proposal to combine the content of Mining Proposals and Mine Closure Plans into a single MDCP presents a significant risk of increased approval timeframes. Currently, some proponents need to frequently update Mining Proposals (for example, every six (6) months) due to the prescriptive nature of Mining Proposals, their rapidly evolving operations and mining planning changes, combined with the complexity of their specific tenure arrangement. Furthermore, proponents are experiencing ongoing delays to Mining Proposal approvals, with at least one member company receiving no correspondence from DMIRS since submission of a Mining Proposal amendment six (6) months ago.

Many proponents also experience significant delays (often in excess of 18 months) in receiving a response from DMIRS on submitted Mine Closure Plans. One member company has not received formal approval or substantive feedback from DMIRS on a Mine Closure Plan submitted in 2013, nor on any of the subsequent triennial revisions in the intervening period.

Under the proposed amendments, a MDCP is to contain the following information:

- Proposal description.
- Legislative framework.

- Land uses and stakeholder engagement.
- Baseline data and analysis.
- Risk assessment and management.
- Environmental and closure outcomes, measurement criteria and monitoring.
- Closure implementation.
- Financial provisioning for closure.

The amalgamation of the core aspects of a Mining Proposal and Mine Closure Plan cannot deliver substantial or sustained streamlining benefits unless the fundamental issues underlying existing, persistent delays to approval timeframes is addressed, particularly noting the disparate delays associated with closure related aspects.

The lack of whole-of-government reporting on approvals timeframes, inconsistent performance reporting across agencies, and use of the 'stop-the-clock' mechanism masks the lengthy end-to-end approvals timeframes currently experienced by proponents.

3.2 Recommended solutions

The following reforms are recommended to fundamentally address the aforementioned key issues. These reforms are proposed as a package to be implemented in a staged approach to deliver streamlining benefits in the near-term while more fulsome, fundamental regulatory streamlining is progressed across the longer-term.

3.2.1 Clarify environmental regulatory remit and prevent duplicative regulation

- *Deliver streamlining benefits through administrative reforms in the near-term and legislative amendments in the longer-term*

Refer to **Section 1.2.1** *Clarify environmental regulatory remit and prevent duplicative regulation*.

CME supports proposed amendments to s70O to remove reference to guidelines. This amendment provides greater clarity in defining what constitutes the application document and enables consideration of impact assessments under other legislation, thereby facilitating regulatory streamlining and clarification of DMIRS jurisdiction. This would then clearly enable DMIRS to modify their existing guidance to remove whole sections that duplicate existing requirements under the EP Act. Additionally, the proposed changes remove the need for "statutory guidelines" and reduce risks to security of title that may stem from these statutory guidelines.

CME strongly recommends the clarification of the regulatory remit of DMIRS and the Mining Act and the express removal of duplication with the EP Act – both in legislation and accompanying guidance. A clear opportunity exists in the near-term for DWER and DMIRS to collaborate to ensure newly drafted regulations and guidance corresponding to the recent EP Act amendments fundamentally clarifies jurisdiction.

The revision of DMIRS guidance documents can deliver on this objective in the near-term.

4. Transitional arrangements

Under the Bill, DMIRS propose to require the transition of existing Mining Proposals under the new framework within six (6) years of commencement of the amendments, whereas existing PoWs are grandfathered but the Bill is silent on existing NOIs and Mine Closure Plans. CME understands the objective of this six-year transition is to push current Mining Proposals under the new Approvals Statement and MDCP framework, rather than grandfathering them. CME understands DMIRS's intention is for approved Mine Closure Plans to be brought under the MDCP framework in the current standard 3-yearly Mine Closure Plan review (under tenement conditions). However, it is unclear how this may sit with Mining Proposals that do not come under the MDCP framework, be it either within a six-year transitional period or longer.

CME **strongly** oppose the mandatory transition of existing Mining Proposals and Mine Closure Plans under the new approval framework within six (6) years of commencement. This approach would impose an unreasonable and impracticable impost on proponents and regulator resources. The position for existing NOIs and Mine Closure Plans should also be clarified however CME similarly opposes shortening existing validity periods rather than grandfathering existing approvals.

In response to industry concerns, CME understands that DMIRS are investigating alternative transition arrangements, including the maintenance of all existing approvals of mining operations for the remaining life of the mining tenement on which they were granted. Such an arrangement is exceedingly more reasonable and achievable.

CME recommends the transitional arrangements be amended to ensure all current approvals are maintained for the life of the tenement.

Conclusion

CME thanks DMIRS for the opportunity to comment on the draft Bill and for the public briefing sessions, meetings and other information provided as part of the consultation process to aid understanding of the proposals.

CME reiterates that we look forward to continuing to work with DMIRS to identify and progress opportunities for effective and sustainable regulatory streamlining, building on the improvement intent identified by DMIRS to reduce duplication, improve public and proponent transparency, reduce DMIRS resourcing expended on low-risk, low impact activities through automation and reduction in bespoke assessment, and clarifying compliance requirements.

If you have any further queries regarding the above matters, please contact Bronwyn Bell, Manager – Resource Development & Sustainability, or Kira Sorensen, Senior Adviser – Environment & Sustainability.

Authorised by	Position	Date	Signed
Robert Carruthers	Director – Policy & Advocacy	25/06/2021	
Document reference	210625-DMIRS Streamlining Bill Submission_final.docx		

Appendix I: Project approvals – clarifying jurisdiction

The Issue

Projects in WA are required to obtain a range of approvals from different decision-making authorities (DMAs). What DMAs must or may consider is derived from the jurisdiction and power they are given from legislation. For some approvals, the considerations that different DMAs must or may consider may overlap.

The Problem

Overlapping causes duplication in assessment and decision making. Because of this, projects experience:

- Extra delay
- Higher costs
- Increased risk of third-party challenge to different decisions made on the same project and same subject matter. These may be made on the basis that the DMA has failed to consider a relevant matter
- Approvals for one project that are inconsistent in scope and conditions
- Agencies and DMAs making assessments and decisions outside their areas of expertise.

The Solution

Have only one DMA assessing and deciding on a particular issue. To do this, legislation needs to make clear that the DMA is to be the sole assessor for the issue. It may also be necessary to amend other DMA legislation, to say that particular decision maker must not consider that issue (i.e. expressly exclude jurisdiction and power). For some legislative provisions this may be a simple exercise and for others a full consideration of legislative scope and effect may be needed.

The Benefits

Clarifying the jurisdiction and role of each DMA to ensure one is the sole assessor for each issue will provide:

- Reduced assessment timeframes and more timely project commencement
- Improved allocation and efficiency of limited government resources
- Clarity of regulatory responsibility for assessment, approval, monitoring, and compliance on any particular issue
- Reduced project costs and uncertainty including reduced compliance costs over the life of the project.

An Example

The EP Act in WA is the primary Act for the governance of environmental matters in WA. Let us say that new government policy is created that the EP Act DMAs are to be the sole assessors and DMAs for projects that may have an environmental impact. The EP Act is then amended to that effect.

Other legislation exists, however, which contains provisions by which other DMAs must or may consider environmental impacts. That legislation would need to be amended to say those DMAs must not consider environmental impacts.

For example, since the Mining Act, there has been an expanding consideration of environmental impacts under that Act. This has occurred largely because section 84 provides that reasonable conditions may be imposed for the purpose of preventing or reducing, or making good, injury to land or consequential damage to any other land. Environmental impacts are therefore relevant under the Mining Act and currently taken into account.

The extent to which environmental impacts are now considered relevant under the Mining Act can be seen in the 3 March 2020 Statutory Guidelines for Mining Proposals and is significantly more expansive in scope than that envisaged by the legislature in 1978. This is an example of DMAs expanding their jurisdiction and powers beyond a clear parliamentary intent as to their role.

If environmental impact is only to be considered under the EP Act and amendments to section 84 of the Mining Act (and any other consequential amendments) make this clear, it would mean the Guidelines would have to be amended. It is highly likely, for example, that most of sections 6, 8, 9 and 11, which focus on clearing, dust, water and environmental management of the Guidelines would be removed. They will no longer be relevant considerations for DMIRS and the Minister for Mines. These considerations would be ones solely for the EP Act DMAs.

Mine closure plans may need to be separately addressed.

By these amendments, some environment impacts of mine proposals that are not presently the subject of consideration under the EP Act may become so. Whether and how that occurs may depend on further EP Act amendments and policy development by EP Act DMAs.

Appendix II: Detailed responses to proposed amendments

Table 1: Detailed responses to proposed amendments.

Part	Section	Description of proposed amendment/s	Position	Response
Part IV – Mining tenements	s84AA	Review of mine closure plans	Support	CME support the removal of the legislative requirement for three-yearly review of Mine Closure Plans. Allowing the revision period and resubmission of a Mine Closure Plan to be more specifically linked to the mining operations lifecycle stage, risk profile, knowledge base, and overall mine life as proposed by DMIRS, is a more appropriate model and will ensure government and proponent resources are more appropriately allocated and efficiently used.
	s90	Application of certain provisions to general purpose leases	Conditionally support	**s90(4)** This section clarifies that a reference to a mining lease is to be taken to also be a reference to a general purpose lease for sections 103AK and 103AR. However, this does not capture the sections relevant to the issue of an Approvals Statement. Should reforms to introduce the concept of Approvals Statements proceed, **CME recommends adding references to sections 103AN, 103AO, 103AQ, and 103AS.**

Part	Section	Description of proposed amendment/s	Position	Response
Part IVAA – Conditions and approvals	Conditions of approval proposed to be captured under separate section (new Part IVAA)		Do not support	The proposed new Part IVAA corrupts the fundamental tenure-focused structure of the Mining Act. While it is proposed that the amendments capture all conditions of approval in a separate section for ease of reference, this is not reflected in the current drafting. Some, not all, conditions of approval are captured under new Part IVAA, all of which are subsequently split by approval type and tenure type anyway. Overall, this is an unnecessary, overly complicated, and unhelpful restructuring of the Act. For example, prospectors will now be required to refer to multiple sections of the Act (including the new Part IVAA) to identify all parts relevant to a Prospecting Licence (and similar for all other tenements). **CME does not support the restructuring of the Mining Act and recommends the current structure of the Mining Act be maintained with conditions of approval captured under relevant tenure types.** For all comments below, where CME supports the proposed amendment, this should be done within the existing structure of the Mining Act.

Part	Section	Description of proposed amendment/s	Position	Response
	s103AI	Activity proposed in substitute PoW not to be "substantially different" to activity in the PoW which it replaces	TBC – clarification required	**s103AI(5)** The proposed amendment limits variations to PoW applications prior to assessment / approval by the Minister. It is unclear the key issue this new provision is intended to address. The ability to amend PoW applications prior to assessment / approval is necessary to enable proponents the flexibility to update the application to incorporate new information received from infield surveys, or to reflect last minute changes to work plans. It may also be necessary to address the assessment recommendations and advice of DMIRS staff. Therefore, limiting this ability may unnecessarily increase system administration and impost on proponents through requiring withdrawal and resubmission. Additionally, a key current concern of industry is that PoWs are not able to be edited (at all) once submitted due to limitations with the IT system. This current situation requires significant re-work due to the need to withdraw and re-submit PoWs which, although not currently required by the Act, may become embedded under the proposed Act amendments. This withdrawal and resubmission process also results in resetting the clock and extends actual assessment timeframes for proponents. Proponents need some flexibility to incorporate new information and make adjustments (including adjustments to adopt DMIRS advice as part of the assessment process). **CME requests further clarification on this proposal.**
	s103AJ	Approval of activities in programmes of work	N/A	If section is retained, recommend reword section title to "Approval or refusal of activities in programmes of work".

Part	Section	Description of proposed amendment/s	Position	Response
		Minister may approve, or refuse to approve, an activity in a PoW	TBC – clarification required	**s103AJ(1)** The current drafting implies the Minister does not approve a PoW but instead approves "an activity" that is contained with the PoW application (e.g. build a camp, drill a bore, etc.) It is therefore unclear the implications for PoW applications which contain more than one activity and whether the Minister can approve one activity and refuse to approve another contained within the same PoW application. **CME recommends the section be reworded to clarify the PoW application as a whole is approved or refused or otherwise clarify the drafting (including of all other related clauses) if an alternative effect is intended.**
		Minister to notify the holder of the mining tenement of approval / refusal of PoW application	Conditionally support	**s103AJ(2)** The current drafting only requires the Minister to notify the holder of the mining tenement of the outcome of a PoW application and does not contemplate notification to the authorised person of the holder. There exist scenarios in which an authorised person of the holder of a mining tenement (not the holder of the mining tenement themselves) will be the person responsible for lodgement of a PoW application and implementation of the approval. In this instance, notification by the Minister of the approval / refusal of a PoW application must be given to the authorised person. **CME recommends the section be reworded to require notification by the Minister of the approval / refusal of a PoW application be provided to the holder of a mining tenement or a person authorised by the holder of a mining tenement.**
		Minister to provide reasons for refusal of a PoW application	Support	**s103AJ(2)(b)** CME support transparency of decision-making afforded by the requirement for the Minister to provide reasons for the refusal to approve an application for a PoW.

Part	Section	Description of proposed amendment/s	Position	Response
	s103AK	Low-impact activity must not be done until notice of the activity is given, or the activity is approved under an Approvals Statement	TBC – Clarification required	**s103AK(2)** Clarification required as to whether the intent is that once an Exploration Licence converts to a Mining Lease that any PoWs that existed on the Exploration Licence are voided and any remaining activities that were approved via the PoW must be reapplied for under a MDCP and approved in an Approvals Statement.
		Approvals Statement for the lease	TBC – Clarification required	**s103AK(4)** Current drafting can be read to indicate an Approvals Statement is issued for individual leases. This is inconsistent with the proposal that a single Approvals Statement may cover multiple tenements, as outlined in the Consultation Summary and DMIRS public briefings. Clarification is requested.
	s103AL	Approvals Statement for the miscellaneous licence	TBC – Clarification required	**s103AL(4)** Current drafting can be read to indicate an Approvals Statement is issued for individual miscellaneous licences. This is inconsistent with the proposal that a single Approvals Statement may cover multiple tenements, as outlined in the Consultation Summary and DMIRS public briefings. Clarification is requested.

Part	Section	Description of proposed amendment/s	Position	Response
	s103AM	Activity proposed in substitute not to be "substantially different" to activity in which it replaces	TBC – Clarification requested	**s103AM(5)** The proposed amendment limits variations to MDCPs prior to approval by the Minister. It is unclear the key issue this new provision is intended to address. The ability to amend MDCP applications prior to assessment / approval is necessary to enable proponents the flexibility to update the application to incorporate new information received from infield surveys, or to reflect last minute changes to work plans. Without this flexibility proponents will be required to withdraw and resubmit MDCPs, resetting the clock and extending approval timeframes. It may also be necessary to address the assessment recommendations and advice of DMIRS staff. Therefore, limiting this ability may unnecessarily increase system administration and impost on proponents through requiring withdrawal and resubmission (as is currently experienced). This current situation requires re-work due to the need to withdraw and re-submit a Mining Proposal which, although not currently required by the Act, may become required for MDCPs due to the proposed Act amendments. This withdrawal and resubmission process also results in resetting the clock and extends actual assessment timeframes for proponents. Proponents need some flexibility to incorporate new information and make adjustments (including adjustments to adopt DMIRS advice as part of the assessment process). **CME requests further clarification on this proposal.**
	s103AN	Approvals Statement for the mining tenement	Do not support as currently drafted	**s103AN(2)(a)** Current drafting may indicate an Approvals Statement is issued for individual mining tenements. This is inconsistent with the proposal that a single Approvals Statement may cover multiple tenements, as outlined in the Consultation Summary and DMIRS public briefings. **CME recommends the section be amended to refer to 'mining tenements'.**

Part	Section	Description of proposed amendment/s	Position	Response
		Give a copy of the Approvals Statement to the holder of the mining tenement	Conditionally support	**s103AN(2)(b)** CME requests clarification on drafting use of “holder” as an alternate to “lessee” given the holder of a mining lease is referred to in the Act as a “lessee” (not a “holder”) and whether or not this distinction needs to be carried consistently through the Act. **CME recommends the section be reworded to clarify a copy of the Approvals Statement is given to the holder of a mining tenement or a person authorised by the holder of a mining tenement.**
	s103AP	Minister may vary or cancel an approval on their own initiative without reason or consultation with the proponent	Do not support as currently drafted	**s103AP(1)** CME does not support the Minister’s unilateral power to vary or cancel an approval without prior consultation with the proponent. CME also does not support the absence of appeal provisions to enable proponents to appeal such a decision. The proposed amendments and accompanying Consultation Summary provide no detail regarding the conditions under which the variation or cancellation of an approval would be warranted. CME understands this detail and the supporting policy work is yet to be developed, and that this power is not expected to be delegated. **CME strongly recommends the section be reworded to require the Minister to consult and reach agreement with the proponent prior to varying or cancellation of an approval.**

Part	Section	Description of proposed amendment/s	Position	Response
	s103AS	Minister may extend or vary the date recorded on the Approvals Statement by which a MCP must be lodged	Do not support as currently drafted	**s103AS(3)** CME does not support the Minister's unilateral power to vary the date recorded on an Approvals Statement by which a Mine Closure Plan must be lodged without prior consultation with the proponent. The proposed amendments and accompanying Consultation Summary provide no detail regarding the conditions under which the variation of this date would be warranted. CME understands proponents will be able to recommend to the Minister the date by which a Mine Closure Plan must be lodged however this ability is not provided for in the proposed amendments or the accompanying Consultation Summary. **CME recommends the section be reworded to require the Minister to consult and reach agreement with the proponent prior to varying the date recorded on an Approvals Statement by which a MCP must be lodged.**
	s103AT	Minister may cancel or vary a condition imposed on a mining tenement	Do not support as currently drafted	**s103AT(3)** CME does not support the Minister's unilateral power to vary a condition on a mining tenement without prior consultation with the proponent. The proposed amendments and accompanying Consultation Summary provide no detail regarding the conditions under which the variation of a condition would be warranted. **CME recommends the section be reworded to require the Minister to consult and reach agreement with the proponent prior to varying a condition on a mining tenement.**