



Environmental Protection Authority

Department of Energy, Mines, Industry
Regulation and Safety
REC.consultation@dmirs.wa.gov.au

Enquiries: Melissa Lamb
Email: melissa.lamb@dwer.wa.gov.au

To Whom It May Concern,

**ENVIRONMENTAL PROTECTION AUTHORITY SUBMISSION TO THE
DEPARTMENT OF ENERGY, MINES, INDUSTRY REGULATION AND SAFETY'S –
DRAFT MINING DEVELOPMENT AND CLOSURE PROPOSAL GUIDELINE AND
DRAFT SMALL OPERATIONS MINING DEVELOPMENT AND CLOSURE
PROPOSAL PROFORMA.**

Thank you for the opportunity to make a submission on the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) Draft [Mining Development and Closure Proposal \(MDCP\) Guideline](#) (MDCP guideline) (March 2024) and Draft [Mining Development and Closure Proposal for Small Mining Operations](#) (March 2024).

[Mining Development and Closure Proposal \(MDCP\) Guideline](#)

The EPA is broadly supportive of the streamlined approach outlined in the MDCP guideline to reduce duplication and improve the efficiency of approvals processes. The EPA provides this submission as an opportunity to further align the MDCP guideline with the EPA's environmental impact assessment (EIA) processes and procedures, as identified in the [EPA's submission](#) provided in August 2023 on the DEMIRS MDCP discussion paper.

Section 44(2AA) of the *Environmental Protection Act 1986* (EP Act) provide an opportunity for the EPA to take into consideration other decision-making processes that can mitigate the potential impacts of the proposal on the environment. In making a determination that other processes can mitigate impacts, the EPA considers the scope of the legislation, processes and assessment, as well as the ability to ensure environmental outcomes can be achieved. The EPA specifically supports the use of outcome based conditions, which aligns with the preferred conditioning framework recommended by the EPA in its Report and Recommendations to the Minister for Environment.

The EPA notes that the environmental factors within the MDCP do not align with the EPA's environmental factors, although the MDCP objectives for water resources and soil and landforms are similar with an emphasis on protecting and maintaining the environmental value. However, the EPA notes that the objectives for biodiversity only focusing on maintaining the value, not also ensuring its protection. Closer and actual alignment with the intent of the relevant EPA environmental factor objectives could assist in providing the EPA with greater confidence that the decision-making processes under the Mining Act could mitigate a proposal's impacts on the environment. Aligning factors and objectives would also improve consistency between the two frameworks and ensure that proponents, the public and regulators are all using the same objectives regardless of the Act they are engaging with.

Two further considerations of the EPA when undertaking environmental impact assessments is Greenhouse Gas Emissions and holistic impacts to the environment. The EPA considers that DEMIRS should also consider these issues during the decision-making process conducted under the Mining Act. The EPA notes this was done in recent assessments. As above, alignment with factors and objectives will assist in ensuring consistency for proponents.

In regard to the DEMIRS' objective for rehabilitation and mine closure, the EPA acknowledges that post-mining land use could require very different standards for rehabilitation and therefore restoration is not appropriate in all situations. However, the MDCP Guideline should specify that a high standard of rehabilitation in areas of high ecological or biodiversity values is likely to be required and provide relevant examples of the types of outcome based conditions that might apply to achieve this.

This is particularly relevant when a proposal is also being assessed under Part IV of the EP Act. The MDCP could be amended to further clarify the expectations of the DEMIRS regarding environmental outcomes in areas of higher biodiversity, in particular where a proponent is proposing to use restoration or higher standards of rehabilitation as part of an offsets package. The EPA suggests the MDCP is amended to provide clarity to proponents that where a proposal has high biodiversity values, and where restoration/rehabilitation has been accounted for in the offsets calculations, DEMIRS will require the proponent to meet this standard.

The EPA would also like further clarity on what a Mine Closure Plan (MCP) will cover and how the EPA can rely on the implementation of the MCP to align with the EPA's factor objectives when a Part V clearing permit is the primary instrument for clearing approvals.

The EPA considers that DEMIRS considerations could be strengthened and covered in the guideline, including:

- how off-site environmental impacts and values are considered
- how conditions would be enforced on a Mining lease if surrendered or forfeited noting that a Mining lease can be surrendered at any time

- requiring compliance monitoring and reporting, and providing for review of environmental conditions when warranted, and
- requiring compliance monitoring reporting when environmental management commitments are made in programmes of work to ensure environmental outcomes are achieved.

The EPA considers that the publication of the MDCP and associated Regulation may provide additional opportunities to reduce regulatory duplication through providing the EPA with confidence that the decision-making processes under the *Mining Act 1978* could mitigate a proposal's impacts on the environment.

Small Mining Operations

The following comments relate to the draft [Mining Development and Closure Proposal for Small Mining Operations](#) (March 2024).

The EPA notes that the criteria listed on page 2 identifies the types of proposals considered small mining operations, and particularly the criteria that excludes an operation from being considered a small mining operation. The EPA considers that the second set of criteria does not imply low environmental impacts or environmental significance. The EPA considers that a small mining operation should not include proposals with a high risk of impacting the environment, such as proposals located in sensitive areas / potentially impacting significant environmental values or species at risk of extinction.

The EPA considers that the requirements to demonstrate that an operation should be considered a Small Mining Operations be tightened to ensure protection of environmental values. For example, the form should require evidence that groundwater will not be intersected. It currently only includes confirmation via a tick box. Measures should be required to be in place to prevent hydrocarbon and chemical spills, or seepage and drainage. The form currently only covers containment and clean up.

The EPA welcomes further discussions on the MDCP guideline and alignment of DEMIRS and EPA EIA processes and procedures to achieve better environmental outcomes. We note that mining regulations will be released that prescribe the content requirements of a MDCP, and that it would be preferable to review these concurrently, in addition to the Mine Closure Plan guideline recently released.

Cumulative and strategic issues

The EPA is also encouraging regional approaches to deliver environmental protection, which includes the avoidance of high value areas (such as in recent the Medcalf Vanadium Project) and through consideration of [regional offsets](#). The EPA considers that adequate consideration of cumulative impacts will also support opportunities to reduce duplication and increase the likelihood of consistency with the Commonwealth government as they move to nature positive outcomes (e.g. *the Draft Pilbara Bioregion: EPBC Act Policy Statement*).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lee McIntosh', with a stylized, cursive script.

Lee McIntosh
DEPUTY CHAIR, ENVIRONMENTAL PROTECTION AUTHORITY

5 June 2024