

Streamlining (Mining Amendment) Bill 2021  
Department of Mines, Industry Regulation and  
Safety  
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Dear Mr Smith

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## ENVIRONMENTAL PROTECTION AUTHORITY SUBMISSION TO THE DEPARTMENT OF MINING, INDUSTRY REGULATION AND SAFETY'S STREAMLINING (MINING AMENDMENT) BILL 2021

### Background

The Environmental Protection Authority (EPA) welcomes and generally supports the Department of Mines, Industry Regulation and Safety's (DMIRS) Streamlining (Mining Amendment) Bill 2021.

The EPA understands interactions between applications and approvals under both the *Mining Act 1978* (Mining Act) and *Environmental Protection Act 1986* (EP Act) has been central to the Streamlining WA Project. It is important that each agency has clearly defined scope and responsibilities which will avoid duplication in assessments and regulation for the mining industry.

The EPA is supportive of this principle and the associated intent of the Bill that it:

- allows DMIRS to redirect the focus of its available resources to the higher risk issues;
- ensures full information capture; and
- ensures appropriate regulation of those activities, without jeopardising environmental outcomes.

### Mining Development and Closure Proposal assessment and Approvals Statement

The EPA understands the Bill proposes the submission of a single Mining Development and Closure Proposal. This streamlined application document will be assessed for approval and is intended to result in a consolidated Approvals Statement. Whilst it is understood that the Bill has been developed under the hierarchy of the Mining Act and not the EP Act, the EPA supports the use of the principles used as part of environmental impact assessment undertaken through Part IV of the EP Act.

The EPA uses environmental principles, factors, and associated factor objectives as the basis for assessing whether a proposal can be implemented. When assessing mining (and other) proposals, the EPA employs a mitigation hierarchy that includes avoidance, minimisation, rehabilitation and offsetting. The EPA recommends consideration be given to adopting a similar process for evaluation of environmental effects of the Mining Development and Closure Proposal. The EPA believes this would result in both an effective process and reduce the number of different processes, approaches and standards used.

In addition, recent amendments to the EP Act will soon allow the EPA to take into account other statutory decision-making processes which can mitigate the potential impacts of proposals on the environment. This can be used when determining whether or not to formally assess proposals and when recommending conditions of approval. Alignment with the EPA's environmental principles, factors and objectives; mitigation hierarchy; proposed outcome-based conditions approach; and consideration of cumulative and holistic impacts will support the use of this power.

The EPA is aware that officers from the Department of Water and Environmental Regulation (DWER) and DMIRS have been meeting to progress the implementation of the EP Act amendments and identify streamlining opportunities across the two agencies. The EPA is supportive of this engagement continuing and looks forward to progressing further improvements to achieve environmental protection and efficiencies, including any necessary updates to the Memorandum of Understanding between the two agencies.

As an area of increasing focus and as part of the EPA new powers to take into account other decision-making authorities, the EPA is also supportive of consideration to be given to other agencies that can mitigate the potential impacts on the environment from greenhouse gas emissions. In the event that these decision-makers are able to adequately assess and regulate greenhouse gas emissions, the EPA could use its new powers to not formally assess or condition proposals which would lead to broader streamlining opportunities.

## **Low Impact Notification**

The EPA understands the new 'Low Impact Notification' stream of authorisation is intended to allow impact notification and automated authorisation of low impact activities. This will remove the time it takes for an application to await and undergo assessment, while ensuring information is captured and appropriate regulation of those activities is achieved.

The EPA notes this will replace some Programme of Works notifications. It is considered that there is an opportunity for the automated process to be an early indicator to mining proponents of the need to consider applicable provisions of the EP Act, including:

- The potential for mining proposals to be referred to the EPA
- The need to understand the constraints of investigative works which can be carried out if a proposal is being assessed by the EPA

- The need to understand the requirement to obtain consent before commencing minor or preliminary works if a proposal is being assessed by the EPA.

It is understood that the criteria that define a low-impact activity for the purposes of the Mining Act, will be prescribed in the Mining Regulations 1981 and will be subject to a separate consultation process post the passage of the Bill. The EPA look forward to this consultation.

### **Other issues**

As the EP Act prevails over the Mining Act to the extent of any inconsistency, the EPA recommends consideration be given of any risk of any inconsistency arising as a result of the Bill. This would ensure that there are not unforeseen legal consequences which then cause confusion and delay and undermine the intent of the Bill.

The EPA notes that for some mining proposals, proponents are required to provide biodiversity offsets as part of EP Act approvals. Greenhouse gas emissions offsets are also being considered for large scale emitters. The EPA recommends consideration be given to alerting miners to the risk of potential inconsistency (and potential benefits and synergies) of these offsets proposals with mining.

### **Conclusion**

In summary, the EPA is supportive of the Streamlining (Mining Amendment) Bill 2021 in context of the considerations outlined in this letter. The EPA believes that the Bill is an opportunity to further improve a proponent's awareness of the importance of delivering against environmental objectives and achieving streamlining improvements.

I would welcome an opportunity to meet the appropriate representatives of DMIRS to further discuss opportunities to achieve these improvements.

Yours Sincerely



**Professor Matthew Tonts**  
CHAIR

2 June 2021