



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

Response to submissions

Eligible Mining Activity Framework

February 2025



Stakeholder comments

A consultation draft of the Mining Regulations Amendment Regulations 2024 (EMA Regulations) was released on the Department of Energy, Mines, Industry Regulations and Safety (DEMIRS) website for public comment from 8 May 2024 to 3 July 2024 with sixteen stakeholders providing feedback.

The review process notified respondents that their submissions would be made publicly available on the DEMIRS website. For the purposes grouping and responding to feedback from stakeholders more efficiently, the submissions have been arranged by theme. The text of submissions are included verbatim.

Key themes of feedback received

The key themes of this feedback were related to:

Impacts of EMAs on environmental features

Several stakeholders expressed concern regarding the authorisation process for an eligible mining activity (EMA) and potential environmental impacts. Though the EMA framework provides a mechanism to authorise a subset of exploration and prospecting activities, it is important to consider these activities holistically and in conjunction with the other criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity, prescribed conditions that applicants must adhere to when undertaking an EMA and the requirement to rehabilitate all disturbances and report back to DEMIRS).

Notwithstanding, these concerns are noted and DEMIRS has committed to ongoing review of the framework post-implementation to ensure it is functioning as intended.

EMA Criteria – Scale and type of activities

Stakeholders had mixed views on where the criteria for an EMA should be set. DEMIRS has attempted to develop a set of criteria that provide a balance between authorising minimal disturbance activities and creating the intended efficiencies, whilst ensuring the initial roll out of the EMA Framework has adequate oversight.

DEMIRS is committing to monitoring and reviewing the framework as it is implemented, to ensure it is functioning as intended. Where improvements or changes are identified as being needed, these will be implemented.

Definition of 'low impact mining activity'

Several stakeholders queried use of the term 'low impact mining activities' within the regulations, noting that this term may not accurately describe these activities. DEMIRS has revised this definition within the regulations to 'relevant mining activities' in recognition that these activities are not inherently low impact, but rather, they can be undertaken with minimal disturbance to the land when they are conducted in accordance with all other prescribed requirements (and outside of excluded areas).

Timeframes related to EMA notices

Stakeholders requested clearer guidance around the timeframes of an EMA notice, specifically in regard to rehabilitation. DEMIRS confirms that the current intended timeframe for an EMA is two years from submission to undertake the works comprised in the EMA notice and a subsequent three-month period from completion of rehabilitation to submit the Notice of Completion.

Proposed Excluded Areas

Stakeholders had a range of suggestions for areas to be included in the EMA excluded area. DEMIRS is continuing to review this layer and confirms that the layer will not be 'static', where new areas are identified that should be included, DEMIRS will investigate.

Key changes to regulations post-consultation

- 'Low impact mining activity' has been amended to 'relevant mining activity' in recognition that these activities are not inherently low impact, but rather, they can be undertaken with minimal disturbance to the land when they are conducted in accordance with all other prescribed requirements.
- A definition for riparian vegetation has been included, "*riparian vegetation* has the meaning given in the *Environmental Protection (Clearing of Native Vegetation Regulations 2004)* regulation 3". This is to ensure consistency with other legislation and for ease of interpretation.
- 58E(3) has been amended to so that the holder must not clear trees having a trunk diameter of 300mm or more at height of **1,300mm** above ground level (decreased from 1,500mm above ground level). This was implemented to protect potential hollow containing habitat trees that are important to native fauna.
- Regulations have been amended to include a requirement that the holder must ensure that soil erosion and other similar land degradation is limited or avoided; and that, to the extent practicable, the quality and flow of surface water is not affected. This was added to further reduce potential impacts to land and water.
- Regulations have been updated to clarify that the obligation to 'harvest, store and stockpile topsoil' only applies in instances where the topsoil is actually cleared. This update was made following feedback that the regulation, as initially drafted, may inadvertently impose an obligation to clear and stockpile topsoil even in instances where it is not required (i.e. when blade up clearing is utilised).

A detailed response to these matters is provided in the below Response to Submissions.

DEMIRS thanks all stakeholders for their considered input into the process.

Ref #	Stakeholder	Comment	DEMIRS Response
ADMINISTRATIVE			
1.	Amalgamated Prospectors and Leaseholders Association Inc (APLA)	APLA generally supports the proposed EMA framework, however has identified the following areas of concern.	DEMIRS thanks APLA for its submission and notes its support of the EMA framework. Please see responses to specific comments in the relevant sections below.
2.	Association of Mining and Exploration Companies (AMEC)	<p>AMEC appreciates the opportunity to provide feedback to the Department of Energy, Mining, Industry Regulation and Safety regarding the proposed Eligible Mining Activities Framework. The willingness of DEMIRS to meet with AMEC and Industry to provide multiple briefings on the drafting is appreciated.</p> <p>Since the concept was originally discussed in the form of the Low Impact Notification framework, AMEC has supported the delivery of this form approval.</p>	DEMIRS thanks AMEC for its submission and notes its support of the EMA framework. Please see responses to specific comments in the relevant sections below.
3.	Australian Wildlife Conservancy	<p>Thank you for the opportunity to comment on the draft EMA Framework outlining the new proposed form of authorisation for certain minimal disturbance and low impact mining exploration activities. The Australian Wildlife Conservancy (AWC) is a significant owner and manager of land for conservation purposes in Western Australia and therefore an interested and affected party with regards to the proposed regulatory changes.</p> <p>We commend the specific inclusion of a number of caveats relating to various environmental protections including 1) prohibited activities relating to damage of riparian vegetation and trees of $\geq 30\text{cm}$ at 1.5m above ground level, 2) the work management conditions listed in 58F, 3) rehabilitation requirements listed in 58G and 4) the a priori identification of Excluded Areas based on the presence of identified environmentally sensitive areas, threatened and priority ecological communities, fauna and flora and recognised conservation areas such as crown reserves.</p>	DEMIRS thanks AWC for its submission. Please see responses to specific comments in relevant sections below.

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		<p>However, we have some remaining concerns about the proposed amendments, which are outlined below.</p>	
4.	BirdLife Australia	<p>BirdLife Australia is an independent grassroots charity, with over 360,000 supporters throughout Australia. We have been the voice for Australia's birds for over a century, protecting native birds and their habitats with on-ground projects and advocacy, informed by rigorous science and sound academic partnerships. Our conservation programs adopt a multi-species landscape-scale approach that is supported by thousands of volunteers and citizen scientists.</p> <p>We welcome the opportunity to comment on the Mining Regulations Amendment Regulations 2024 (Consultation Draft) to prescribe the requirements of the Eligible Mining Activity (EMA) Framework.</p> <p>Our submission will specifically focus on the potential impact to black-cockatoo species in WA.</p> <p>Background:</p> <p>BirdLife Australia has been working on black-cockatoo recovery actions since 2001. In Western Australia, we are working with local communities, landholders and land managers to secure the protection and conservation of the three species of black cockatoos across the South West.</p> <p>Western Australia's southwest is home to 3 iconic species of black-cockatoos: the Ngolyenok (Carnaby's Black-Cockatoo); the Ngolak (Baudin's Black-Cockatoo); and the Karak (Forest Redtailed Black-Cockatoo) - all of which are listed as threatened under state and federal legislation.</p> <p>In the last 50 years, the population of Carnaby's Black-Cockatoos in the Perth–Peel area has declined by about 50%. Their range has contracted by up to a third; similar contractions have been estimated for Baudin's and Forest Red-tailed Black-Cockatoos.</p> <p>Their future will only be secure if we protect and restore the habitat they need to survive. This is not just true for the ancient trees that</p>	<p>DEMIRS thanks BirdLife Australia for its submission.</p> <p>Please see responses to specific comments in relevant sections below.</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>provide nesting hollows for breeding cockatoos, but also for foraging habitat which provides food for the breeding pairs and the young birds after they fledge. Carnaby's Black-Cockatoo is endemic in the south-west of Western Australia, and research has shown that they need remnants of native vegetation within 12 kilometres of their nesting sites to raise healthy young.</p> <p>With accelerated clearing for urban development, mining and logging, their food supply is being depleted, along with the old trees with large hollows that they need for breeding.</p> <p>With threats relating to climate change set to worsen, and WA coming off the back of the hottest summer on record, this risk must be factored into future conservation risks for birds that rely on vulnerable trees and their ecosystems.</p> <p>BirdLife is concerned that these draft regulations will result in clearing of 2ha patches of threatened bird habitat without any assessment. Our comments below relate specifically to black-cockatoos, but we hold concerns regarding impacts on threatened birds more broadly.</p>	
5.	BirdLife Western Australia	<p>BirdLife Western Australia – the state branch of BirdLife Australia – strongly supports the submission made by BirdLife Australia.</p> <p>We wish to make additional comments.</p> <p>We are gravely concerned about the “proposed amendments to the Mining Regulations 1981 to prescribe the requirements of the Eligible Mining Activity (EMA) Framework”.</p> <p>These amendments will devastate large parts of our native vegetation in Western Australia.</p> <p>We call on the amendments to be scraped.</p> <p>The following are some of our concerns.</p>	<p>DEMIRS thanks BirdLife Western Australia for its submission and notes its concerns relating to the EMA framework.</p> <p>Please see responses to specific comments in relevant sections below.</p>
6.	The Chamber of Minerals and Energy of	<p>The concept of Eligible Mining Activities (EMA) has generally been welcomed by industry, recognising the opportunity it presents to deliver streamlining benefits and the reallocation of resources within</p>	<p>DEMIRS thanks CME for its submission and notes its broad support of the EMA framework.</p>

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	Western Australia (CME)	<p>the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) to support assessment of higher risk, more complex applications.</p> <p>Following stakeholder engagement on DEMIRS' EMA Framework Discussion Paper, CME acknowledges that several enhancements have been implemented, specifically regarding criteria for an EMA.</p> <p>CME is supportive of the framework as a whole, however, does believe that further steps could be taken to improve EMA to deliver associated benefits to a broader range of activities. These specific areas of feedback include:</p> <ul style="list-style-type: none"> • broadening the nature and scale of activities that can be considered EMA, including removing Freehold Land and Crown Reserves from the Excluded Areas and Notification Areas. • increasing the cumulative area of activities that can be authorised under an EMA Notice to ten hectares, which can be scaled to a percentage of the tenement size for large tenements. • increasing the possible number of active EMA notices at any one time on a tenement, from two to five. <p>Separate to the Mining Regulations Amendment Regulations 2024 (Consultation Draft), CME also highlights the importance of aligned system improvements to address limitations in spatial and ICT systems, to ensure effective reform delivery of EMA.</p>	<p>DEMIRS notes CME's comments relating to broadening the nature and scale of activities, increasing the cumulative area of activities and increasing the number of active EMA notices permissible at one time.</p> <p>The current criteria and limits associated with the framework need to provide a balance between authorising minimal disturbance activities and creating the intended efficiencies, whilst ensuring the initial roll out of the EMA Framework has adequate oversight. Notwithstanding, DEMIRS commits to reviewing the criteria as the framework is implemented and rolled out.</p>
7.	Cement Concrete & Aggregates Australia (CCAA)	<p>Cement Concrete & Aggregates Australia (CCAA) welcomes the opportunity to provide comments to the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) on the Draft Eligible Mining Activity Regulations.</p> <p>CCAA welcomes efforts to streamline administrative processes and reduce unnecessary red tape and as such CCAA supports the Draft Eligible Mining Activity Regulations.</p> <p>Western Australia's regulatory environment needs to be internationally competitive to continue to attract capital to invest into</p>	DEMIRS thanks CCAA for its submission and notes its support of the draft regulations.

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		<p>the state to ensure a sustainable and competitive heavy construction materials industry. This in turn facilitates Western Australia's productivity, housing affordability and lower infrastructure costs.</p>	
8.	Conservation Council of WA (CCWA)	<p>The Conservation Council of WA (CCWA) is the state's foremost non-profit, non-government conservation organisation representing close to 100 environmental organisations across Western Australia, with tens of thousands of engaged individuals state-wide. This broad collective of like-minded groups and individuals creates a vibrant and passionate community, dedicated to the conservation of our unique and diverse state.</p> <p>CCWA has been a prominent and forthright voice for conservation for more than 50 years working directly with the government, media, industry, community groups, and political parties to promote a more sustainable WA and to protect our natural environment.</p>	DEMIRS thanks CCWA for its submission and has addressed points raised in detailed sections below.
9.	Environmental Defenders Office (EDO)	<p>The Environmental Defenders Office (EDO) welcomes the opportunity to comment on the Draft Eligible Mining Activity (EMA) Regulations - the <i>Mining Regulations Amendment Regulations 2024 (Draft Regulations)</i>.</p> <p>The activities contained within an EMA Notice will not be subject to assessment by an Environmental Officer at DEMIRS. Instead, an applicant submitting an EMA will need to ensure that its activities in the EMA comply with the Draft EMA Regulations.</p> <p>In circumstances where the Government seeks to introduce legislation that provides automatic approval, without review, of particular activities, the substance and operation of that legislation is particularly important. The provisions of the Draft EMA Regulations must be clear to ensure tenement holders understand the EMA criteria and their obligations, and DEMIRS can properly monitor and enforce non-compliance.</p> <p>This submission addresses:</p> <ul style="list-style-type: none"> • General comments: Rigorous and enforceable obligations; • Prescribed requirements: limits on size (reg 58D) and time (reg 58J); • Prescribed requirements: prohibited activities (reg 58E); 	DEMIRS thanks the EDO for its submission and has addressed matters raised in detail in sections below.

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		<ul style="list-style-type: none"> • Prescribed requirements: records (s58H); • Excluded areas; and • • Notification areas. 	
10.	Hetherington	<p>Hetherington appreciates the opportunity to provide feedback to the Department of Energy, Mines, Industry Regulation and Safety's ("DEMIRS") on the Mining Regulations Amendment Regulations 2024 ("Proposed EMA Regulations") and the accompanying draft Information Sheet: Eligible Mining Activity Regulations ("Information Sheet").</p> <p>We have considered the Proposed EMA Regulations and Information Sheet and provide the following comments for consideration.</p>	DEMIRS thanks Hetherington for its submission and has addressed matters raised in detail in sections below.
11.	Moths and Butterflies Australasia Inc (MBA)	<p>We are concerned about the Eligible Mining Activity Regulations, Information Sheet (May 2024) and new EMA framework, particularly in relation to potential impacts on the Arid Bronze Azure Butterfly (ABAB), <i>Ogyris petrina</i>, which is listed as a Critically Endangered species under the Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act) and the Western Australian <i>Biodiversity Conservation Act 2016</i>.</p>	<p>DEMIRS thanks MBA for its submission and notes its concerns relating to the EMA framework.</p> <p>Please see responses to specific comments in relevant sections below.</p>
12.	Murdoch University	<p>Thank you for the opportunity to provide feedback on proposed amendments to the Mining Regulations 1981, to prescribe the requirements of the Eligible Mining Activity (EMA) Framework.</p> <p>We strongly oppose any changes to legislation that allow black cockatoo foraging habitat, roosting habitat or current/future breeding habitat to be cleared without assessment and appropriate mitigation measures, given that ongoing habitat loss is the primary driver of these species' continuing declines. If the government enables such clearing without assessment, this is likely to increase the risk to southwest WA's three threatened black cockatoo species, and would go against recommendations by species experts in Recovery Plans for these three threatened species.</p> <p>For Baudin's cockatoos in particular, which the WA Threatened Species Scientific Committee is considering for up-listing to Critically Endangered, and for which only around 3,250 mature individuals remain (Johnstone et al. 2021), any clearing of this species' habitat</p>	<p>DEMIRS thanks Murdoch University for its submission and notes its comments relating to potential impacts of the EMA Framework on Black Cockatoos.</p> <p>Please see responses to specific comments in relevant sections below.</p>

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		<p>without assessment and mitigation is not advisable; and would be against Western Australia’s biodiversity conservation goals.</p> <p>Below, we outline concerns regarding these proposed legislative amendments.</p> <p>Background: Our ecological research with Western Australia’s three threatened black cockatoo species</p> <p>We are writing from the Black Cockatoo Conservation Management Project in the School of Veterinary Medicine at Murdoch University. The Black Cockatoo Conservation Management Project research group has been studying the health, movement ecology and demographics of Western Australia’s three species of black cockatoos for over 15 years. The research team has strong collaborative research ties with the state Department of Biodiversity, Conservation and Attractions (DBCA), Kaarakin Black Cockatoo Conservation Centre, WA Museum, World Wildlife Fund, Birdlife Australia, industry groups in the mining and housing sectors, and Perth Zoo.</p> <p>The Black Cockatoo Conservation Management Project’s research extends across all three species of black cockatoo in southwest Western Australia, and covers three key areas: (1) health monitoring of Carnaby’s cockatoo nestlings throughout the species’ breeding range, (2) demographic research into key threatening processes for black cockatoos admitted to Perth Zoo Veterinary Department for treatment, and disease screening including rehabilitation back to the wild, and (3) landscape-scale ecological research using satellite PTT and GPS tracking across each species’ distribution ranges, to determine habitat use, key habitat areas, migratory movements, resource mapping and habitat suitability modelling. Collectively, this research addresses key Actions and Objectives of the Recovery Plans for all three species.</p> <p>As the state government is aware, despite the dedicated efforts of black cockatoo Recovery Teams, research teams, and community groups fighting to save habitat and rehabilitate injured black cockatoos back to the wild, all three species remain in grave danger</p>	

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		<p>of continued and catastrophic population decline. In Western Australia, where the human population is projected to grow rapidly in the next few decades, there will be increasing risks to black cockatoos from land clearing, vehicle strikes and other related anthropogenic threats. The biggest threat to black cockatoos is the ongoing loss of their breeding, feeding and roosting habitat.</p> <p>Our position on this proposal and specific concerns for Baudin's cockatoos</p> <p>Murdoch University's Black Cockatoo Conservation Management Project opposes any changes to legislation that would allow black cockatoo foraging habitat, roosting habitat or current/future breeding habitat to be cleared without assessment, and without effective mitigation built into regulatory processes to ensure impacts to affected black cockatoo flocks and populations are mitigated fully.</p> <p>Although all three species of black cockatoo in southwest Western Australia are threatened, we focus our discussion below primarily on Baudin's cockatoos; as this species is at greatest immediate risk, and therefore actions by government to halt population declines are most urgent for this species. Our comments below about the importance of protecting and creating habitat for Baudin's cockatoos will also apply to Carnaby's cockatoos and forest red-tailed black cockatoos.</p> <p><i>DBCA advises that Baudin's cockatoo should be up-listed to Critically Endangered</i></p> <p>The Western Australian Department of Biodiversity, Conservation and Attractions (DBCA) and BirdLife Australia have submitted a nomination to the Western Australian Threatened Species Scientific Committee (TSSC) calling for Baudin's cockatoo to be up-listed from Endangered to Critically Endangered. The reasons outlined in the nomination follow those listed in the Action Plan for Australian Birds 2020 (Johnstone et al. 2021), which first recommended several years ago that Baudin's cockatoos need to be up-listed to Critically Endangered. We note that the threats to Baudin's cockatoos which are listed in the Action Plan for Australian Birds 2020 have persisted and likely worsened since the Action Plan was published.</p>	

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		<p>There is an urgency to halting and reversing Baudin's cockatoo declines because of the very low estimated numbers of mature Baudin's cockatoos that remain (best estimate 3,250 mature individuals; Johnstone et al. [2021]), and the increasing threats as outlined in the nomination to the TSSC (p.6), namely:</p> <ul style="list-style-type: none"> · projected ongoing decline due to nest hollow shortages causing ongoing poor productivity; · no apparent change to risk to the species from illegal shooting or vehicle strike; · projections of heat, drought and fire changes that are associated with climate change in the southwest all suggesting less forest food and fewer sites with accessible drinking water available between now and 2062; · Projected rate of decline to continue at a similar rate of 80-99%, with no amelioration of the threats apparent. <p>Legislative changes that allow Baudin's cockatoo habitat to be cleared without assessment, and without requirements to mitigate impacts, may pose an unacceptable additional threat to this species' persistence.</p> <p><i>Impacts of legislative changes when considered in the context of cumulative impacts</i></p> <p>New data and information that will be relevant to DEMIRS' assessment of the cumulative impact of legislative changes on WA's black cockatoos include the recent (first half of 2024) large-scale vegetation die-off across southwest Western Australia, due to drought and high temperatures (Fowler & Ruthrof 2024). From satellite imagery and ground-truthing to date, these impacts to bushland include severe die-off sites in forests that are key habitats for black cockatoos (e.g. the northern jarrah-marri forest; an important black cockatoo breeding site). As DEMIRS will be aware, the summer of 2024 was the hottest on record for Western Australia, and the first half of 2024 has also been the Perth-Peel region's driest six months on record. Higher frequencies of droughts and high-intensity fires, leading to greater net losses of nest hollows and the</p>	

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		foraging resources needed to support breeding, will be of grave concern for the persistence of southwest Western Australia's black cockatoos. Likewise, reduced rainfall in particular months would have major impacts on fruiting levels for black cockatoo food plants; including production of marri fruit on which Baudin's cockatoo (a marri specialist) depends for survival.	
13.	Nature Conservation Margaret River Region (Nature Conservation)	<p>Nature Conservation Margaret River Region (Nature Conservation) is the peak non-profit community-based environmental organisation working on the key environmental challenges facing the southwest of Western Australia. Nature Conservation has more than 2000 local supporters (including members, donors, active volunteers, businesses and project partners/participants). We advocate for best practice environmental land use and management for the natural environment in our region.</p> <p>Thank you for the opportunity to comment on these proposed EMA Regulations. Our key recommendations and concerns are set out below. Although the first of our comments is focussed on the southwest region, where we are based, the remainder of our comments apply more generally. We look forward to your response to our submission.</p>	<p>DEMIRS thanks Nature Conservation for its submission.</p> <p>Please see responses to specific comments in relevant sections below.</p>
14.	Western Australian Forest Alliance	The Western Australian Forest Alliance makes the following recommendations to the draft Eligible Mining Activity Regulations.	<p>DEMIRS thanks Nature Conservation for its submission.</p> <p>Please see responses to specific comments in relevant sections below.</p>
General Comments on Regulations			
15.	BirdLife Western Australia	<p>Amendments will lead to more mines approved and more native vegetation cleared</p> <p>Exploration licence is proxy for a mining lease in Western Australia: <i>"The purpose of obtaining an exploration licence is that if the exploration indicates mineralisation in economic quantities, the holder can obtain a title to mine. Thus, it is fundamentally important to the holder of an exploration licence that it is able to convert its exploration rights into mining rights."</i> (Hunt 2001)</p>	<p>The EMA framework is not related to the grant of exploration licences, which is a form of mining tenure granted by DEMIRS. Applicants would already need to have live tenure in place prior to submission of an EMA Notice.</p> <p>Notwithstanding, DEMIRS clarifies that an exploration license is not a proxy for a mining lease in Western Australia. Whilst the <i>Mining Act 1978</i> gives the holder of an exploration tenement the right to apply for a mining lease, this application is still assessed and must comply</p>

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		<p>In other words, issuing an exploration license without environmental assessment is effectively issuing a mining permit without environmental assessment when mineralisation is found.</p> <p>This is a dangerous precedent.</p> <p>For this reason alone, BirdLife Western Australia argues that the full environmental impact of a mining proposal should be considered at the exploration stage.</p>	<p>with all requirements of the Mining Act. It must be accompanied by a mining proposal or mineralisation report which outline the nature of a proposed development, the method of mining, its environmental impact, rehabilitation proposal and all building plans.</p>
16.	BirdLife Western Australia	<p>Our native vegetation is fast disappearing; amendments will compound the loss</p> <p>A quick look at a satellite map of the south-west of Western Australia — shows that most of our native vegetation has been cleared. The “green bits” are all that remain. To make matters worse, these green bits are fragmented, degraded or becoming degraded, and at risk of being cleared.</p> <p>The amendments will accelerate the rate of clearing and increase habitat fragmentation.</p> <p>Supporters of the amendments will probably argue that “it’s just 2 hectares”. The harsh reality is that much of the clearing today is through large numbers of “small” proposals.</p> <p>It’s death-by-a-thousand-cuts.</p>	<p>Though an EMA notice can authorise up to 2ha of activity, it is important to consider this criteria holistically and in conjunction with the other criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA).</p> <p>Importantly, when undertaking an EMA, applicants must:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; and - avoid clearing native vegetation.
17.	BirdLife Western Australia	<p>Rehabilitation will not work</p> <p>No land impacted by mining in WA has been rehabilitated or restored in a manner which we would view to be satisfactory or capable of being handed back to the state.</p> <p>West Australian mining industry representatives struggled to point to even a single instance of a mine site having been rehabilitated to a high standard during a Senate Inquiry (Commonwealth of Australia 2019).</p> <p>There remains 3000 sq km of land in Western Australia that has been degraded and not restored by the mining industry.</p>	<p>Comment noted. DEMIRS will continually review the rehabilitation requirements associated with an EMA as the framework is implemented and rolled out to ensure the intended outcomes are being met.</p>

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18.		<p>System is broken – it does not protect our native vegetation</p> <p>Western Australian legislation and the application process for clearing proposals does not protect our native vegetation, our unique biodiversity, and our natural heritage. The legislation and application process are outdated, broken, and not fit-for-purpose.</p> <p>These amendments further weaken environmental protection. All of this highlights the staggering weakness of “the system”. Western Australia is clearly a developing jurisdiction when it comes to habitat and biodiversity protection.</p> <p>As Gregory Andrews, Australia’s first threatened species commissioner, put it (Cox 2022):</p> <p><i>“... Australians define ourselves through our wildlife. We’ve got them on our money, our sports teams, our coat of arms, the tail of Qantas. We can’t keep defining ourselves by our wildlife when we’re losing it to extinction. If we’re serious about what it means to be Australian ... we are a rich enough country with enough habitat and enough cleared area to dedicate the remaining land to protection.”</i></p>	<p>Comment noted. The EMA framework incorporates a number of protections against the clearing of native vegetation including:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; - avoid clearing native vegetation; - manage their activities in accordance with a prescribed set of requirements; - rehabilitate their activities to a standard prescribed in the regulations; and - not undertake their activities within areas excluded from the framework. <p>The introduction of the requirement for applicants to submit a completion notice at the conclusion of their activities will improve the ability to track actual clearing associated with EMAs.</p>
19.	BirdLife Western Australia	<p>Our natural environment is in a state-of-disrepair; amendments will compound the demise</p> <p>A “poor and deteriorating state” as described by the report of Australia State of the Environment (2021). Many ecosystems in Western Australia have collapsed or are on the verge of collapse. The major reason is land clearing.</p> <p>These amendments will enable land clearing to continue unabated. The attitude towards our native vegetation has obviously not evolved since the 1950s – it is there to be cleared and exploited.</p> <p>It is disturbing that the Western Australian Government does not know the extent of land clearing across the state.</p>	

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		<p>The government also refuses to carry out a State of the Environment Report for Western Australia. Western Australia was among the first Australian states and territories to embark on State of the Environment reporting. We now lag well behind the rest of Australia. Western Australia's last report was released in 2007. Unlike all other jurisdictions, with the exception of the Northern Territory, Western Australia has no legislative requirement for regular State of the Environment reporting. The EPA's annual reports, while valuable, cannot substitute for State of the Environment reports as they lack the necessary depth and breadth in reporting, and generally do not assess trends over time.</p>	
20.	EDO	<p>It is fundamental that the Draft Regulations are rigorous, detailed and enforceable whilst the risk criteria are clear, comprehensive and tailored to environmental risk.</p> <p>Outcomes-based or performance-based regulatory approaches have been favoured by some regulators on the basis that they offer greater flexibility and more tailored responses to meet environmental outcomes. At the same time, outcomes-based regulations are not appropriate in all circumstances, and will lead to poor environmental results if requirements are vaguely expressed, capable of multiple interpretations, and/or where there are insufficient measurement criteria, baseline data or reporting mechanisms.</p> <p>In this context, it is important that the Draft Regulations do not include ambiguous or vague language when setting environmental outcomes. Throughout the Draft Regulations there are ambiguous provisions. For example, the Draft Regulations state that the holder of an EMA must:</p> <ul style="list-style-type: none"> • apply the following principles – <u>avoid</u> clearing native vegetation, <u>minimise</u> the amount of native vegetation that is cleared, <u>reduce</u> the impact of clearing on any environmental value (reg 58E(4)); • contain and <u>appropriately</u> store intercepted groundwater (reg 58F(1)); and • ensure that environmentally hazardous materials associated with an EMA are <u>appropriately</u> managed and stored so as to 	<p>Comment noted. DEMIRS has sought advice and input on the drafting of the regulations, to ensure they are enforceable whilst still being consistent with a risk based regulatory framework.</p> <p>Feedback relating to use of the word “appropriate” is noted however, in many of the regulations, the word “appropriately” is followed by a qualifier such as:</p> <ul style="list-style-type: none"> - “The holder must backfill and appropriately profile an excavation associated with an EMA, so as to match the pre-existing land profile and drainage flows” - “The holder must ensure that environmentally hazardous materials associated with an EMA are appropriately managed and stored so as to prevent contamination or pollution of the environment”. <p>These qualifiers will provide officers with the opportunity to assess whether the outcome of the regulation has been achieved. This is consistent with our move towards risk and outcome-based regulation.</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>prevent contamination or pollution of the environment (emphasis added) (reg 58F(5)).</p> <p>We understand that DEMIRS monitors compliance with mining activities through a combination of desktop reviews of information submitted during reporting, spatial mapping, and on-the-ground surveys. We are concerned that vague terms such as 'avoid', 'minimise', 'reduce', 'appropriately store', and 'appropriately manage and store' lack clarity for both the EMA holder (in terms of what criteria they must meet) as well as DEMIRS (in terms of how assessment of compliance will be achieved).</p> <p>Words such as 'avoid' and 'minimise' imply a scope for some form of environmental impact to occur. This means that while a holder can 'avoid' clearing native vegetation, there is still some scope for environmental degradation. It is unclear what criteria DEMIRS will use to assess whether holders of EMAs are 'avoiding' clearing native vegetation, 'minimising' the amount of vegetation that is cleared, and 'reducing' impacts on environmental values. The same reasoning applies to what could be considered 'appropriate' management and storage.</p> <p>Further, these terms allow room for interpretation and potentially inconsistent application.</p> <p>While the definition or interpretation of these terms could be included in a policy or guidance document, such documents do not have the same legal status as provisions in an Act or Regulations.</p>	
21.	EDO	<p>There is currently no provision in the Draft Regulations relating to self-reporting in instances of non-compliance. We understand DEMIRS monitors compliance through a range of methods including review of satellite imagery, during both operations and rehabilitation.</p> <p>In circumstances where holders are being granted automated permission to conduct activities that will have an impact on the environment (regardless of the scale of that impact), a holder should be required to notify DEMIRS of non-compliance with the Draft Regulations.</p>	<p>The requirement to report non-compliances to DEMIRS (and DEMIRS' approach to non-compliances) is set out in the existing Guidance Note on Environmental Non-compliance and Incident Reporting. DEMIRS will review this document as part of broader implementation of the <i>Mining Amendment Act 2022</i> to identify if any updates are required.</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Recommendation: The Draft Regulations should provide for mandatory reporting requirements in circumstances where a holder is non-compliant with their obligations.</p>	
22.	Hetherington	<p>The current drafting of the Proposed EMA Regulations does not specifically include a definition of “EMA.”</p> <p>It is suggested that the following be included regulation 58B: “EMA means an eligible mining activity.”</p>	<p>Comment is noted however as EMA Notice is already defined in the Primary Legislation (the Mining Act), it was not felt necessary to duplicate it in the regulations.</p>
23.	Hetherington	<p>Throughout the draft regulations there are inconsistencies in the inclusion of rehabilitation works as a part of or separate to an EMA. This can be seen in the current drafting of regulation 58G(2) as compared to regulation 58I(3). Regulation 58I does not include any reference to rehabilitation works, only ‘the completion of the EMA’. It is suggested that regulation 58I(3)(b) be amended to: “Not later than 3 months after the completion of the EMA, including all rehabilitation works, to which the notice relates.” The inconsistency surrounding whether rehabilitation works are included in an EMA should be reviewed throughout all of Part 4A as this may affect the necessary time computations.</p>	<p>The inclusion of rehabilitation in the drafting of the definition of ‘low impact mining activities’ (to be renamed ‘relevant mining activities’) has the effect that rehabilitation forms part of an EMA (i.e. an EMA is not complete until the necessary rehabilitation works have been completed).</p> <p>The difference in drafting between 58G(2) and 58I is due to 58G(2) needing to separate rehabilitation from the mining works authorised under the EMA notice (because the regulation is imposing the requirement to undertake rehabilitation within 12 months of completing the mining activities). Meanwhile, 58(1) relates to completion of the whole EMA (including rehabilitation) so reference to ‘completion of the EMA’ is adequate to capture rehabilitation.</p>
24.	Hetherington	<p>The EMA Notice process has been designed to be an efficient online automatic authorisation process. Clarification around lodgement timeframes, including interaction with business hours would be beneficial to include in the Information Sheet. For example, could a holder serve an EMA Notice on a Saturday morning and complete the work described that afternoon, or would the holder have to wait until 8:30 am on the next working day?</p>	<p>The lodgement system for EMAs will facilitate 24/7 lodgements of EMAs. When an EMA notice is successfully lodged, applicants will receive immediate authorisation.</p>
25.	Rod Eastwood & Matt Williams	<p>If I am reading the Eligible Mining Activity Regulations, Information Sheet (May 2024) correctly, the act says that the EMA framework is a new form of authorisation for certain minimal disturbance and low impact activities. Under the framework, mining tenement holders will be able to receive automatic authorisation to undertake eligible activities by serving an EMA Notice to DEMIRS. Some</p>	<p>DEMIRS confirms that this interpretation is correct.</p>

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		<p>activities are not permitted (Regulation 58E) and several conditions are specified under Regulations 58F, 58G, 58H, & 58I. Under Regulation 58J(2) A mining tenement may have 2 EMA notices active on the tenement at any one time. However, when a Notice of Completion under section 103AF of the (amended) Mining Act has been submitted, the mining company can serve another EMA Notice up to a total of five in one financial year. This amounts to ten hectares that can be cleared/disturbed each year.</p> <p>Many areas are also excluded from the EMA Framework including areas that may contain "Threatened and Priority Fauna and Flora (including a 50m buffer)". Authorisation of an EMA Notice under the Mining Act does not authorise activities and /or impacts under other legislation. It remains the applicant's responsibility to obtain all other required approvals prior to commencing activities.</p>	
58B: Terms Used			
26.	AMEC	<p>58B(a) "drilling and activities associated with drilling..."</p> <p>Could this be interpreted to include things like accommodation villages, bores for water, basically anything incidental to but supporting drilling?</p>	<p>Currently, the proposed activities associated with drilling that can be authorised under the EMA framework will include the construction of drill pads and sumps (and tracks). This will be managed via the system where these are the only activities applicants will be able to select for authorisation.</p> <p>It is not intended that accommodation villages be captured as an EMA at this stage.</p>
27.	CCWA	<p>The Proposed Amendment's definition of low impact mining activity provides for potentially significant activities to go ahead without any environmental assessment.</p> <p>CCWA asserts that the activities outlined in section 58B are potentially significant and must not be exempt from environmental assessment. This point will be elaborated throughout this submission.</p>	<p>Following feedback from stakeholders, DEMIRS has requested that these activities no longer be defined as 'low impact' in recognition of the fact they are not inherently low impact, but rather, they can be undertaken with minimal disturbance to the land when they are conducted in accordance with all other prescribed requirements (and outside of excluded areas).</p>
28.	Shenaye Hummerston	<p>The very definition of a 'Low impact mining activity' is drilling, excavation and construction without limitation. How can this be considered low impact? Clearing of 2 ha of native vegetation and</p>	

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		the excavation of up to 1000 tonnes of soil to a depth of 4m per EMA sounds like a significant impact to me.	
29.	Western Australian Forest Alliance	The Regulations should clarify whether access tracks are included in the maximum 2ha area of activities.	Where an EMA notice includes access tracks, these will contribute to the 2ha limit per notice.
58C - When low impact mining activity is an EMA			
30.	AMEC	<p>(a) "it is carried out for the purpose of..."</p> <p>(b) "it can be carried out in conformity with..."</p> <p>Why is there a distinction between "is" and "can be" here? Does a low impact mining activity (LIMA) not cease being a LIMA if it fails to be carried out in conformity with the rules? This allows a LIMA to be a LIMA merely by being capable of being done in conformity with the rules.</p>	<p>58C(b) was drafted this way in recognition that at the point of submission, we can't know how an activity will be carried out.</p> <p>Notwithstanding, an applicant is obligated to undertake their activities in accordance with the prescribed requirements because of s. 103AE(1) of the (amended) Mining Act.</p>
58D - Prescribed Requirements for EMAs: Limits on Size			
31.	AMEC	The excavation limitation of 1,000 tonnes is very low and will constrain activities. It is reasonable in hilly terrain that a single drill pad, and more for diamond drilling, could use that tonnage entirely. A discretion could be included in the drafting to allow the Minister to consider requests for further tonnage. Details of how explorers can obtain this excess tonnage approval should be provided at a future date.	<p>Comment is noted, however in developing the EMA criteria, the limits on size criteria needs to provide a balance between authorising minimal disturbance activities and creating the intended efficiencies, whilst ensuring the initial roll out of the EMA Framework has adequate oversight.</p> <p>With regards to hillside drilling, 1000 tonnes is considered appropriate while the framework is first rolled out in order to ensure that impacts to hilly terrain (which can support sensitive environmental features) is managed appropriately.</p>
32.	AWC	<p>Concerns with proposed eligible mining exploration activities erroneously described as low impact</p> <ul style="list-style-type: none"> The current proposal allows multiple EMAs to be held concurrently and consecutively, each impacting up to 2 ha. Permitting this scale of activity on each tenement each year will result cumulatively in significant areas (up to 10ha/financial year) impacted by destructive mining exploration activities. 	<p>1) Comment relating to potential impacts of adjacent EMA notices are noted and the following strategies are proposed to mitigate these risks:</p> <ul style="list-style-type: none"> Exploring development of an EMA Policy which articulates DEMIRS' position and expectations for the management of EMAs. This could include policy positions such as giving DEMIRS the option

Ref #	Stakeholder	Comment	DEMIRS Response
		<ul style="list-style-type: none"> • The proposal does not provide sufficient guidance, or set adequate limits, on the scale of permitted drilling and drill pad construction. In order to be classified as a low impact activity, a maximum permitted drill depth should be specified e.g. drilling not exceeding 80m and limited to aircore drilling to avoid large drilling rigs. • The proposal does not provide sufficient guidance, or set adequate limits, on the scale of permitted excavation of sumps to contain and manage groundwater. In order to be classified as a low impact activity, a maximum volume of groundwater disturbance/extraction should be specified e.g. not exceeding 4,000L. • While we commend the inclusion of a clear and specific limit on the scale of permitted excavations up to 4m deep (no more than 1,000 tonnes per tenement), we suggest that it not appropriate to classify excavations of 1,000 tonnes in scale as a low impact activity. Excavation works are significantly more destructive than alternatives such as drilling, and as such should be scrutinised more closely by the regulatory authority prior to proceeding. 	<p>to exclude tenements from the EMA framework where DEMIRS feels activities aren't being undertaken with "minimal disturbance" (i.e. continuous, adjacent EMAs) by the tenement holder.</p> <ul style="list-style-type: none"> - Exploring whether Resources Online (the lodgement system used to lodge an EMA notice) could include a flag to identify where numerous EMAs have been lodged adjacent to each other, to inform DEMIRS' compliance programmes. - Ongoing review of how implementation of the framework is performing. <p>2) Comment is noted, however DEMIRS does not intend on imposing a depth limit for drill holes as this is not always inherently tied to disturbance, and an 80m depth limit may unintentionally limit the effectiveness of the EMA framework. Notwithstanding, DEMIRS considers there are adequate controls within the framework to minimise impacts. These controls include:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; - avoid clearing native vegetation; - manage their activities in accordance with a prescribed set of requirements; - rehabilitate their activities to a standard prescribed in the regulations; and - not undertake their activities within areas excluded from the framework.

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			<p>3) Comment is noted, however, DEMIRS does not intend on imposing a limit on the scale of sumps. This may unintentionally lead to the scenario where a sump cannot adequately contain all encountered groundwater (potentially leading to poor environmental outcomes).</p> <p>Notwithstanding, sumps are expected to be rehabilitated in accordance with the prescribed requirements.</p>
33.	BirdLife Western Australia	<p>Amendments will result in vast amounts of native vegetation being cleared</p> <p>The amendments will allow disturbance for exploration of up to 10 ha per year – 2 ha per EMA and two EMAs at a time – at a depth of 4 m without environmental assessment.</p> <p>That's a lot of clearing without assessment over the next 50-100 years when we consider the high number of active mining companies in Western Australia. For example, 500 mining companies x 5 ha per year x 100 years = 250 000 ha.</p>	<p>Comment is noted, however, DEMIRS clarifies that an applicant would not be able to clear up to 10ha to a depth of 4m, due to excavations being limited by a 1000 tonnes tonnage limit.</p> <p>Notwithstanding, under the prescribed regulations, applicants will also need to:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; and - avoid and minimise clearing native vegetation. <p>In addition to the above, under the EMA Regulations, applicants must ensure that a rehabilitated area associated with an EMA is safe, stable, non-polluting and capable of supporting a self-sustaining ecosystem or the use to which the area was put before the EMA was carried out.</p>
34.	CCWA	<p>The Proposed Amendment allows for up to 2 hectares of land to be disturbed by an EMA, with no environmental assessment, or provision of environmental plans. This allows for the well documented impacts that result from mining activities, including to fauna, flora, water, air quality, noise emissions, residential receptors and the public, to occur without any environmental assessment. CCWA asserts that the potentially significant impacts of mining proposals require adequate environmental assessment.</p>	<p>Though an EMA notice can authorise up to 2ha of activity and can authorise the disturbance of 1000 tonnes of material, it is important to consider this criteria holistically and in conjunction with the other criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA).</p>

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		<p>The Proposed Amendment allows for up to 2 hectares of land to be disturbed by an EMA, with no more than 2 active EMA's held by a proponent at any given time, and no more than 5 EMA's given to a proponent within a financial year. This allows for 4 hectares of land to be disturbed at a time, and up to 10 ha to be disturbed in a year. Therefore, the Proposed Amendment allows for a potentially significant cumulative impact by individual Proponents, and by Proponents in a given area.</p> <p>The Proposed Amendment will increase significant impact to the environment, by allowing for a potentially large and significant amount of clearing and high risk activities to go ahead without environmental assessment.</p>	<p>Importantly, when undertaking an EMA, applicants must:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; - avoid clearing native vegetation; - manage their activities in accordance with a prescribed set of requirements; - rehabilitate their activities to a standard prescribed in the regulations; and - not undertake their activities within areas excluded from the framework.
35.	CCWA	<p>The Proposed Amendment allows for up to 1000 tonnes of material to be excavated, extracted or removed via an EMA. This allows for up to 2000 tonnes at a time, and 5000 tonnes per year by one proponent. The Proposed Amendment therefore allows for an unacceptable increase in excavation, extraction and removal of material cumulatively, without any environmental impact assessment.</p> <p>The cumulative impacts of mining activities in Australia, Western Australia, and locally, has contributed to climate change, and the loss and decline of conservation significant species and communities. CCWA asserts that the Proposed Amendment will permit unacceptable environmental harm.</p>	
36.	EDO	<p>While an EMA on an area cannot exceed two hectares or 1000 tonnes, regulation 58J(2) provides that two EMAs can be active at one time on a single tenement. EDO notes that there is no proposed minimum spacing between activities on an EMA or between EMAs.</p> <p>The practical effect of this is that a tenement could have a large, 4 hectare area disturbed on one tenement at the same time.</p> <p>Recommendation: The Draft Regulations should make provision for restrictions on the proximity of EMAs under different EMA notices.</p>	<p>Comment is noted, however, at this point in time, minimum spacing between EMA/EMA notices is not proposed to be introduced via regulations.</p> <p>Notwithstanding, comments raised by stakeholders regarding potential impacts of adjacent EMA notices are noted and the following strategies are proposed to mitigate these risks:</p> <ul style="list-style-type: none"> - Exploring development of an EMA Policy which articulates DEMIRS' position and expectations for the management of EMAs. This could include policy positions such as giving DEMIRS the option to exclude tenements

Ref #	Stakeholder	Comment	DEMIRS Response
			<p>from the EMA framework where DEMIRS feels activities aren't being undertaken with "minimal disturbance" (i.e. continuous, adjacent EMAs) by the tenement holder.</p> <ul style="list-style-type: none"> - Exploring whether Resources Online (the lodgement system used to lodge an EMA notice) could include a flag to identify where numerous EMAs have been lodged adjacent to each other, to inform DEMIRS' compliance programmes. - Ongoing review of how implementation of the framework is performing.
37.	Hetherington	<p>The current drafting of regulation 58D(2) is unnecessarily lengthy.</p> <p>We suggest the following simplification: "If the EMA consists of or includes excavating land — the aggregated quantity of material excavated, extracted or removed by all other excavation activity to which the EMA Notice relates, must not exceed 1, 000 tonnes."</p>	<p>Comment noted. The regulations will continue to be reviewed for clarity as they progress towards finalisation.</p>
38.	Murdoch	<p>The proposed definition of 'low impact mining activity' (p5 of the draft regulations), advises that "potential black cockatoo nest trees (>300mm at 50cm above ground level)" would be prohibited from clearing; but there appears to be no protection for future breeding trees that are smaller than this size – which represent important future breeding habitat. Nor is there any protection for black cockatoo foraging and roosting habitat, which are both critical habitat types to retain – including critical to retain near nest trees, otherwise the nest trees will not remain viable. If government enables proponents to clear up to 2ha of black cockatoo food resources, roosts or future breeding habitat without assessment, and without effective mitigation of impacts, this will add to the threats to black cockatoo recovery.</p> <p>Murdoch University data: "<i>No patch size is too small</i>" to be useful as foraging habitat for black cockatoos</p> <p>With regard to the impact of clearing foraging habitat: as native vegetation regulators will be aware, the Referral Guidelines for</p>	<p>It is acknowledged that the current tree criteria (amended to 30cm at 1.3m high) does not capture future breeding trees that are smaller than this size, however, the regulations still require applicants to avoid, minimise and reduce the impact of clearing <u>all</u> vegetation.</p> <p>In addition, following stakeholder consultation, the excluded area map has been extended to capture more of the southwest and therefore excludes a significant portion of black cockatoos' distribution throughout WA.</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Western Australia's three black cockatoo species identify that the clearing of even one hectare of black cockatoo foraging habitat is considered a potential 'significant impact' for these threatened species, and requires referral under the EPBC Act. Murdoch University's black cockatoo tracking data show that no patch size is too small to be useful to black cockatoos for foraging (Murdoch University unpubl. data); the tracking data show that black cockatoos use 0.1ha patches of food resources, and also single trees. These findings have been presented to DWER, and are being prepared for publication.</p>	
39.	Nature Conservation	<p>An overall allowance of 10ha per year, per tenement is simply too high. Under these proposed regulations the cumulative impact over time could be considerable and well beyond any rational allowable measure.</p> <p>We consider that these allowances should not take a one-size-fits-all approach. Within the southwest region, for example, this allowance is very high relative to the land area that is not excluded. The maximum allowance should be reduced to a lower level and the timeframe extended such that the EMA allowance applies over (say) five years instead of annually - or the allowance reduced to a maximum of three EMAs. We suggest 1 ha is appropriate</p>	<p>Though an EMA notice can authorise up to 2ha of activity (and up to 10ha per financial year), it is important to consider this criteria holistically and in conjunction with the other criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA).</p> <p>Importantly, when undertaking an EMA, applicants must:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation; - avoid clearing native vegetation; - manage their activities in accordance with a prescribed set of requirements; - rehabilitate their activities to a standard prescribed in the regulations; and - not undertake their activities within areas excluded from the framework. <p>In addition, following stakeholder consultation, the excluded area map has been extended to capture more of</p>

Ref #	Stakeholder	Comment	DEMIRS Response
			the southwest (meaning an EMA notice cannot lodged in these areas).
40.	Shenaye Hummerston	There is nothing in the draft regulations to specify proximity limits to EMA's, meaning that they can actually be undertaken immediately adjacent to each other. This may result in a higher level of impact on that area and effectively mean that the impacted area is less likely to be able to recover through natural regeneration.	<p>Comments raised by stakeholders regarding potential impacts of adjacent EMA notices are noted and the following strategies are proposed to mitigate these risks:</p> <ul style="list-style-type: none"> - Exploring development of an EMA Policy which articulates DEMIRS' position and expectations for the management of EMAs. This could include policy positions such as giving DEMIRS the option to exclude tenements from the EMA framework where DEMIRS feels activities aren't being undertaken with "minimal disturbance" (i.e. continuous, adjacent EMAs) by the tenement holder. - Exploring whether Resources Online (the lodgement system used to lodge an EMA notice) could include a flag to identify where numerous EMAs have been lodged adjacent to each other, to inform DEMIRS' compliance programmes. <p>-Ongoing review of how implementation of the framework is performing.</p>
41.	Shenaye Hummerston	Only 2ha sounds like a minimal impact, however the regulation amendments actually allow for up to 10ha to be cleared and significantly disturbed <u>every year</u> (potentially in one contiguous area) with absolutely no assessment or checks. This is significant and has the potential to create large impacts regionally over time. The main areas that these changes will apply to are generally under surveyed or data deficient.	<p>Though an EMA notice can authorise up to 2ha of activity (and up to 10ha per financial year), it is important to consider this criteria holistically and in conjunction with the other criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA).</p> <p>Importantly, when undertaking an EMA, applicants must:</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; - not clear riparian vegetation;

Ref #	Stakeholder	Comment	DEMIRS Response
			<ul style="list-style-type: none"> - avoid clearing native vegetation; - manage their activities in accordance with a prescribed set of requirements; - rehabilitate their activities to a standard prescribed in the regulations; and - not undertake their activities within areas excluded from the framework. <p>Post-implementation of the EMA Framework, DEMIRS will have a robust compliance process in place to monitor and track EMAs to ensure they are being undertaken in accordance with all prescribed requirements.</p>
42.	Western Australian Forest Alliance	The Regulations must provide a minimum spacing between open EMAs so that two active EMAs from the same proponent cannot be joined and form a larger 4ha EMA, or multiple proponents cannot have EMAs in too close proximity.	<p>Comments raised by stakeholders regarding potential impacts of adjacent EMA notices are noted and the following strategies are proposed to mitigate these risks:</p> <ul style="list-style-type: none"> - Development of an EMA Policy which articulates DEMIRS' position and expectations for the management of EMAs. This could include policy positions such as giving DEMIRS the option to exclude tenements from the EMA framework where DEMIRS feels activities aren't being undertaken with "minimal disturbance" (i.e. continuous, adjacent EMAs) by the tenement holder. - Exploring whether Resources Online (the lodgement system used to lodge an EMA notice) could include a flag to identify where numerous EMAs have been lodged adjacent to each other, to inform DEMIRS' compliance programmes. <p>-Ongoing review of how implementation of the framework is performing.</p>
58E - Prescribed requirements for EMAs: prohibited activities			
43.	AMEC	58E(4) "following principles, out in descending order" "Out" is a typo.	Comment noted and will be addressed when finalising the regulations.

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44.	AWC	<p>We commend the protection of standing trees with diameter ≥ 30 cm at 1.5m above ground level (section 58E3), to conserve old-growth trees which will help conserve hollows for species such as black cockatoos, but we encourage the inclusion of fallen trees of that size too, to protect denning sites of threatened terrestrial species such as the reintroduced Western Quoll and extant Western Spiny-tailed Skink.</p>	<p>Fallen trees are not proposed to be included in the regulations as a prohibited activity, however DEMIRS may look to provide further guidance on this matter as the EMA framework is implemented.</p>
45.	EDO	<p>The Draft Regulations specify two prohibited activities. In carrying out an EMA, a holder must not damage or destroy:</p> <ul style="list-style-type: none"> • riparian vegetation (reg 58E(2)); or • trees having a trunk diameter of 300 mm or more at a height of 1500 mm above ground level (reg 58E(3)). <p>EDO supports the inclusion of prohibited activities. In particular, we note the intent of this regulation, as noted in the Discussion Paper, is to protect mature trees that provide fauna habitat.</p> <p>The proposed enforcement of this provision is unclear.</p>	<p>Section 103AE(1) of the (amended) Mining Act makes it a condition of every tenement that operators must not carry out an EMA other than in accordance with the prescribed requirements.</p> <p>The effect of this provision is that failure to comply with any of the prescribed requirements would constitute a breach of tenement conditions and render the tenement liable for forfeiture action.</p>
46.	Hetherington	<p>The current drafting of regulation 58(2) prohibits an EMA holder from damaging or destroying riparian vegetation. It is not obvious whether this is to be construed consistent with regulation 3 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (WA) or some other definition. We suggest inserting at regulation 58E(1) a definition for “riparian vegetation”. Regulation 58E(1) would also benefit from the inclusion of a definition for “damage” and “destroy” to confirm what extent of damage is meant (trampling for instance).</p>	<p>Comment is noted and DEMIRS has requested that these sections be amended for clarity.</p>
47.	Nature Conservation	<p>In our view the minimum tree diameter of 30cm at 1.5m high to protect trees from being lost under these proposed regulations is too large. Diameter at breast height measurements (1.5m) vary from species to species, with various mature species, having smaller diameters and thus requiring protection. In the southwest, this includes <i>melaleuca spp</i>, <i>banksia spp</i> and <i>acacia spp</i> for example. Regulations should be species specific re controls on protecting mature trees, indeed mature trees should be retained.</p>	<p>It is acknowledged that the current tree criteria (amended to 30cm at 1.3m high) may not capture all species mentioned in comment, however, applicants are still required to avoid clearing <u>all</u> vegetation and the excluded area map has been extended to capture almost the entirety of the southwest.</p>

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48.	Western Australian Forest Alliance	<p>We welcome Regulation 58E which stipulates that EMA holders must not damage or destroy riparian vegetation or trees that have a trunk diameter of 30 cm (or more) at a height of 1.5 m above ground level.</p> <p>The regulations must clarify how tree size will be surveyed and documented to ensure no damage takes place.</p>	Comment noted – whilst it is not intended to capture and prescribe surveying methods in regulations, DEMIRS will consider developing guidance on how tenement holders can ensure compliance with this regulation.
58F - Prescribed Requirements for EMAs: Work Management			
49.	APLA	<p>Section 58F (7) states that “The holder must ensure that waste, rubbish, equipment and structures associated with an EMA are removed from the mining tenement or disposed of in an appropriate manner as soon as practicable and in any event within 12 months of their initial placement”.</p> <p>APLA has no issue with this requirement in relation to waste and rubbish, however the requirement to remove equipment and structures within 12 months of their placement is not reasonable as activities requiring equipment and structures may be ongoing for longer than 12 months. APLA suggests that either waste and rubbish be uncoupled from equipment and structures. This will allow for the equipment and structures that is required to be removed within 12 months after the completion of activities, to simply amended to “within 12 months from completion of activities”.</p>	Activities authorised under the EMA framework should be short-lived, minimal disturbance activities that can be completely rehabilitated within 12 months. For those activities where infrastructure is required for a longer period of time, it is recommended these still be applied for under a programme of work.
50.	AWC	<p>The exploratory nature of the works encompassed by EMAs means that equipment will be entering areas that may otherwise receive little disturbance and no weed incursion. Mining exploratory activities may directly have ‘low impact’ on the local environment, however if they cause the arrival of invasive weed species, they pose a substantial risk of complete ecosystem alteration.</p> <p>As such, we recommend stipulating that all equipment brought onto site under an EMA should undergo thorough weed quarantining measures upon each arrival. At present the work management conditions are commendable, but the inclusion of weed quarantining measures will make these measures more robust.</p>	Comment noted. For consistency, DEMIRS is considering weed management requirements as part of its broader exploration and prospecting framework.
51.	Hetherington	In relation to regulation 58F(4), we suggest that “match” be substituted for “restore” as the rehabilitation process cannot always guarantee reversion to an identical pre-exploration state.	Comment is noted and will be considered as part of finalising the regulations.
52.	Hetherington	We suggest that regulation 58F(6) be amended for clarity as follows:	DEMIRS intends to retain the wording as currently drafted, as this imposes the obligation to remove sample bags

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		<p>“The holder must ensure that a sample bag associated with an EMA is removed from the mining tenement — (a) before any decay or loss of structural integrity occurs; or (b) not later than 12 months after its initial placement.”</p>	<p>prior to them decaying (and therefore spilling sample), irrespective of whether this is before the 12-month timeframe.</p>
58G - Prescribed Requirements for EMAs: Rehabilitation			
53.	AMEC	<p>58G(1)(b) "mining and excavation activities"</p> <p>Is this language choice deliberately different from "exploration and prospecting" activities?</p>	<p>The wording of “mining and excavation activities” is intended to capture all activities undertaken under the EMA notice but excluding rehabilitation (noting that under the <i>Mining Act 1978</i>, the definition of mining includes exploration and prospecting activities).</p>
54.	CCWA	<p>Requirements for management plans, monitoring and compliance for the rehabilitation of EMA's is non-negotiable to ensure the long-term recovery of ecosystems and slowing of climate change progression. However, the Proposed Amendment neglects this by failing to provide any requirements for rehabilitation conditions.</p> <p>Rehabilitation of mines is a major environmental concern, being a complicated process which must be progressive. Specific rehabilitation requirements are crucial to its success.</p>	<p>Regulation 58G imposes a number of rehabilitation requirements including:</p> <ul style="list-style-type: none"> - Rehabilitating the area within 12 months; - Respreading topsoil and vegetation; - Ensuring that the area is safe, stable, non-polluting and capable of supporting a self-sustaining ecosystem (or the use to which the area was used for before the EMA was carried out).
55.	Hetherington	<p>Regulation 58G(1)(b) uses language that is inconsistent with the rest of the Proposed EMA Regulations. We suggest amending the regulation to read: “...within 12 months of the completion of the low impact mining activities included in the EMA Notice, spread the topsoil and cleared vegetation over all cleared areas associated with the EMA Notice.”</p> <p>We repeat and apply our comments above to the current drafting of regulation 58G(2).</p>	<p>See response to #23 for an explanation of why the terms “mining and excavation activities” has been used in this provision.</p> <p>Suggested wording is noted, however as rehabilitation is included in low impact mining activities (to be renamed relevant mining activities) there is a need to separate it out in the provisions relating to rehabilitation.</p>
56.	Hetherington	<p>In relation to regulation 58G(3), we query whether the requirements set out therein can be self-assessed. If not, what qualified person could assess whether a holder has rehabilitated an area associated with an EMA to be safe, stable, non-polluting and capable of supporting a self-sustaining ecosystem?</p>	<p>This regulation does not impose the obligation for an operator to achieve a self-sustaining ecosystem immediately upon the completion of rehabilitation activities, but rather, establishes that rehabilitation must be safe, stable and completed to a standard where the area is capable of supporting a self-sustaining ecosystem</p>

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			or the use to which the area was put before the EMA was carried out.
57.	Shenaye Hummerston	Rehabilitation is required to a level at which the site is 'capable of supporting a self-sustaining ecosystem or the use to which the area was put before the EMA was carried out' – there is no criteria for determining if this has been achieved. It is unlikely that this level of restoration can be achieved within the 12-month timeframe. Particularly for access tracks and larger areas. This is potentially a green light to high levels of habitat fragmentation for a range of species.	This regulation does not impose the obligation for an operator to achieve a self-sustaining ecosystem immediately upon the completion of rehabilitation activities, but rather, establishes that rehabilitation must be completed to a standard where the area is capable of supporting a self-sustaining ecosystem.
58.	Shenaye Hummerston	Requirement to store topsoil and cleared vegetative material may result in a broader than necessary impact. The proponent is effectively encouraged to clear the maximum area to ensure all vegetation and soil is stored prior to undertaking exploration works.	DEMIRS has requested that the regulations be updated to clarify that only cleared topsoil and vegetation should be stockpiled.
58H - Prescribed Requirements for EMAs: Records			
59.	AMEC	58H(a)(i) "area of ground disturbed" Earlier, the regulations speak to "land disturbed", not ground disturbed. Consistency would be helpful.	DEMIRS has requested that this be clarified in the regulations.
60.	EDO	Effective compliance and enforcement mechanisms require that obligations are clear, specific and measurable so that breaches can be identified and remedied. For outcome-based regulations to succeed, approval holders must be able to demonstrate their progress through the implementation of management activities and through ongoing monitoring. The Draft Regulations require a holder to make and maintain records and to 'provide the records to the Department on request' (reg 58H(b)). This requirement can be strengthened. The Draft Regulations should include a requirement that holders monitor, review and report against the relevant environmental outcomes, at set timeframes, to the Minister and to the regulator. Reports should be published and made available on the public register. To ensure records are created, maintained and able to be accessed expeditiously by DEMIRS, we suggest requiring these records to be	The completion notice process for an EMA notice will require applicants to provide information on how the EMA was undertaken and rehabilitated, and include the ability to upload photographs and other relevant material related to rehabilitation. Publishing of this information publicly is out of scope currently, however, information provided in this submission, along with the original EMA notice will inform DEMIRS' compliance programme, where environmental officers may undertake regulatory activities to ensure EMAs are conducted in accordance with prescribed requirements.

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		<p>uploaded to DEMIRS' electronic lodgement system at the same time the holder provides their notice of completion.</p> <p>Recommendation: Regulation 58H should provide for monitoring, review and reporting against environmental outcomes at set timeframes, and for mandatory reporting at the same time the holder lodges a notice of completion. Reporting should be made publicly available.</p>	
61.	Western Australian Forest Alliance	Regulation 58H should include monitoring and reporting against environmental outcomes at set timeframes and upon completion. Reporting should be made publicly available.	
58J - Prescribed conditions for mining tenements			
62.	APLA	<p>Section 58J (2) states that "It is a condition of every mining tenement that the holder must not give an EMA notice relating to the tenement at a time when <u>more than 1</u> EMA notice relating to the tenement is active." The Information Sheet provided by DEMIRS states that "A mining tenement may only have <u>2</u> EMA notices active on the tenement at any one time".</p> <p>Section 58J (3) states that "It is a condition of every mining tenement that the holder must not give an EMA notice relating to the tenement in any financial year in which <u>more than 4</u> EMA notices relating to the tenement have already been given." The Information Sheet provided by DEMIRS states that "A mining tenement may only have <u>5</u> EMA notices served on the tenement per financial year."</p> <p>APLA appreciates the clarity provided by the Information Sheet but feels that the Regulation is drafted in a confusing way and suggests that the maximum of 2 EMAs at any one time and 5 across the financial year should be reflected clearly in the legislation rather than "more than 1" and "more than 4".</p>	It is acknowledged that the wording of 58J (2) and (3) is potentially unclear, however DEMIRS has clarified that the wording of these regulations achieves the policy intent of allowing 2 EMAs 'active' at one time and no more than 5 EMA notices per tenement per financial year.
63.	EDO	Regulation 58J provides that an EMA notice is 'active' where a notice of completion (advising the authorised activities have been rehabilitated) has not been given to the Minister under section 103AF(2) of the Amendment Act. As soon as the notice is submitted, a tenement holder is able to submit a new EMA Notice.	Comment noted, however, DEMIRS does not intend on imposing the requirement that it must review and sign off on every completion notice that is submitted, as this may limit the efficiency of the framework and reduce the intended benefits of redirecting officers time to high-risk compliance activities. Notwithstanding, DEMIRS will still

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Although DEMIRS have advised audits and compliance checks of notices will be conducted, it is concerning that the Draft Regulations allow for a tenement holder to submit a notice of completion and apply for a new EMA for the same tenement without DEMIRS having reviewed the tenement for compliance with the Draft Regulations or rehabilitation requirements. This could potentially result in instances of non-compliance on the same tenement before DEMIRS reviewed the EMAs. While the objective of the EMA Framework is efficiency; this efficiency must not come at the expense of environmental protection.</p> <p>Recommendation: Draft Regulation 58J should be amended to prohibit the lodgement of an EMA notice before DEMIRS has signed off on a notice of completion for previous EMAs on that tenement.</p>	<p>have a robust audit programme for completion notices (which will then inform DEMIRS' broader compliance programme), especially during initial roll out of the framework.</p> <p>In addition, submission of a completion notice constitutes a legal declaration that all activities have been conducted and rehabilitated in accordance with the prescribed requirements. Where DEMIRS identifies that false or misleading information was provided, appropriate enforcement action will be undertaken.</p>
64.	Hetherington	We note that the regulations stipulate a maximum of 4 active EMAs are permitted but the Information Sheet refers to a maximum of 5 active EMAs ("A mining tenement may only have 5 EMA notices served on the tenement per financial year.").	It is acknowledged that the wording of 58J (2) and (3) is potentially unclear, however DEMIRS has clarified that the wording of these regulations achieves the policy intent of allowing 2 EMAs 'active' at one time and no more than 5 EMA notices per tenement per financial year..
65.	Western Australian Forest Alliance	Regulation 58J(2) should be amended to prohibit the lodgement of an EMA notice before completion for previous EMAs on the same tenement have been signed off by DEMIRS.	<p>Comment noted, however, DEMIRS does not intend on imposing the requirement that it must review and sign off on every completion notice that is submitted, as this may limit the efficiency of the framework and reduce the intended benefits of redirecting officers time to high-risk compliance activities. Notwithstanding, DEMIRS will still have a robust audit programme for completion notices (which will then inform DEMIRS' broader compliance programme), especially during initial roll out of the framework.</p> <p>In addition, submission of a completion notice constitutes a legal declaration that all activities have been conducted and rehabilitated in accordance with the prescribed requirements. Where DEMIRS identifies that false or misleading information was provided, appropriate enforcement action will be undertaken.</p>

Ref #	Stakeholder	Comment	DEMIRS Response
66.	Western Australian Forest Alliance	Regulation 58J(3) states “Cumulative disturbance is a factor assessed by DEMIRS during its environmental assessment of mining activities”. Whilst there are limits placed on the number of EMAs and area impacted, there is currently no means to assess the cumulative impacts of EMAs across different tenements in the same area. This should be rectified in the regulations.	DEMIRS is not intending on introducing limits on the submission of EMA notices on surrounding tenure (there may be difficulties in drafting this given that surrounding tenure is often held by different holders, how is “surrounding” defined etc). However, DEMIRS will have the ability to track and monitor the submission of EMA notices and identify areas of high cumulative disturbance. This may then inform DEMIRS’ compliance programme, where these areas may be inspected to ensure activities have been conducted and rehabilitated in accordance with all prescribed requirements.
Timeframes			
67.	AMEC	<p>The EMAs will be constrained to a total of a two-year validity, including the rehabilitation of disturbance. There are several possible scenarios where two years could be too short a period of time for an EMA to be valid.</p> <p>AMEC recommends that a Ministerial discretion is included to allow a proponent to apply for the provision of further time where appropriate. It is understood by Industry that a statement clarifying why the proponent needed.</p>	<p>DEMIRS acknowledges that its prior intent was that an EMA (including rehabilitation) would be required to be completed within two years. However, in conjunction with development of the Resources Online system, the intent for timelines for EMAs is as follows (noting this is still under development and subject to change):</p> <ul style="list-style-type: none"> - 2 years from submission to undertake mining and excavation works comprised in the EMA notice; - a further 12 months to complete rehabilitation; and - a subsequent 3-month period from completion of rehabilitation to submit the Notice of Completion.
68.	Hetherington	<p>Regulation 58J1(b) sets out when an EMA Notice is active. The current drafting of the Proposed EMA Regulations is silent on the term of approval an EMA Notice; however, we understand that the Discussion Paper provides that EMA Notices are only valid for 2 years. While there are prescribed deadlines for certain actions, there is no distinction made between:</p> <ul style="list-style-type: none"> • an EMA that is yet to be carried out or is ongoing but still compliant with any prescribed timeframes; and • an EMA that has been carried out but not rehabilitated within the prescribed times, noting issues that may arise from transferring the work done over to a programme of work. 	<p>DEMIRS will be managing some aspects relating to timeframes via the Resources Online system. DEMIRS confirms that the current intended timeframe for an EMA is consistent with the timeframe suggested in comment, being “2 years from submission to undertake mining and excavation works comprised in the EMA notice, a further 12 months from completion of the EMA activity to complete rehabilitation and a subsequent further 3-month period from completion of rehabilitation to submit the</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		We further recommend that regulation 58J1(b) is revised to clearly define that and EMA is active during the period that the holder has 2 years from submission to undertake the EMA activity, a further 12 months from completion of the EMA activity to complete rehabilitation and a subsequent further 3-month period from completion of rehabilitation to submit the Notice of Completion.	<i>Notice of Completion</i> " (noting this is still under development and subject to change). It is intended that the system will provide notifications and/or warning to applicants when various milestones in the timeframe are approaching (or have passed)
69.	Hetherington	Noting the above, it is suggested that EMA Notices that are still active after the prescribed periods should be identified as "incomplete" for accurate auditing.	The exact identifier is still to be determined (as part of the Resources Online system development), however the intent is that notices that have not been closed out following the timelines outlined above will be flagged in the system (both for DEMIRS and the applicant).
70.	Hetherington	Further, if an EMA Notice can be continued under a programme of work, will the EMA Notice be considered complete? Alternatively, we suggest that it would be more beneficial to identify this change by flagging the relevant EMA Notice as "inactive". We also query whether it will be possible to withdraw an EMA Notice where no work has been done without counting towards the maximum number of EMA Notices a holder can have pursuant to regulation 58H(3)?	The intention is that the completion notice process for an EMA notice will include an option for applicants to indicate that the notice is now covered by a PoW. This will have the effect of closing the EMA notice. The matter of withdrawal will be considered further as part of the Resources Online system development.
71.	Hetherington	The language used to prescribe the timelines for the doing of certain actions is unclear. Holders will be able to give an EMA Notice under regulation 58I(2), however, the regulation does not set out what the minimum or maximum term of a notice may be. There are no prescribed deadlines for the completion of "mining and excavation activities", but it is assumed that rehabilitation must then be completed within 12 months of the completion of those activities, and then a notice of completion of all work done must be served within 3 months of the completion of rehabilitation works. However, this is not clear in the current drafting of regulation 58I and further provision should be included to be in relation to what timelines should look like.	See response to #68
Transition from an EMA			
72.	AMEC	It is unclear what occurs after an EMA, if part of the way through the proponent's activity that they realise they would like to do further exploratory activity.	The intention is that the completion notice process for an EMA will include an option for applicants to indicate that the notice is now covered by an approved PoW.

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>The drafting needs to be amended so explorers may apply to transition to a Programme of Works (PoW) from an Eligible Mining Activity. This may be appropriate, as the company may have promising drilling results. As noted above, two hectares is approximately 40 – 50 RC drillholes. Some in Industry have reported that they typically apply for a Programme of Work that will extend from 100-1500 holes.</p> <p>The EMA will be for early exploratory drilling. If the results are promising, a path forward is needed.</p> <p>The Regulations could be amended to either define a mechanism to apply, or supply a Minister discretion. If a transition was provided, consideration will have to be given to how an explorer could satisfy rehabilitation for the EMA under the PoW, or whether the transition to a PoW would allow an Explorer to apply for a further EMA.</p>	<p>This will have the effect of closing the EMA notice and activities (and rehabilitation requirements) will then be covered by the programme of work.</p>
73.	Hetherington	<p>In relation to regulation 58F(2), an explanation should be provided as to how regulation 58F(2) can be complied with in situations where a holder has undertaken a drilling campaign that it wishes to continue. Alternatively, how can the work done under an EMA Notice be transferred to a programme of work without undertaking the rehabilitation work required to complete an EMA Notice?</p> <p>We suggest that further provision for the above should be drafted and included in any guidelines released by DEMIRS.</p>	
74.	Hetherington	<p>Through the consultation process, the possibility of converting a drilling campaign under an EMA Notice to a programme of works has been considered. It would be beneficial to provide industry with certainty that works conducted under an EMA Notice:</p> <ul style="list-style-type: none"> a. can be converted or transferred to a programme of work; b. the rehabilitation obligations under the EMA Notice will not be a hindrance to the conversion or transfer to a programme of work; and c. a converted or transferred EMA Notice will be considered complete. 	
Compliance			
75.	CCWA	<p>The Proposed Amendment lacks provisions to ensure that the prohibitions and adherence to values outlined in the Proposed Amendment are complied with.</p>	<p>Section 103AE(1) of the (amended) Mining Act makes it a condition of every tenement that operators must not carry</p>

Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Environmental and management plans that may be important to projects eligible for EMA exemptions involve:</p> <ul style="list-style-type: none"> • Groundwater and drilling fluid management • Protections for fauna • Environmentally hazardous materials • Waste management 	<p>out an EMA other than in accordance with the prescribed requirements.</p> <p>The effect of this provision is that failure to comply with any of the prescribed requirements would constitute a breach of tenement conditions and render the tenement liable for forfeiture action.</p>
76.	Nature Conservation	<p>We note there is no proposal or indication that any interim monitoring or audits are carried out. We are concerned that key aspects of the regulations such as the clearing of sensitive environmental habitat, mature trees, and other unauthorised activities may be undertaken without any appropriate means of compliance and detection. We strongly recommend a system of compliance monitoring that involves interim checks on applicants' activities, and particularly those activities stipulated under sections 58E, 58F and 58G.</p> <p>All EMA activities should have an accompanying monitoring plan specifying the type, frequency and reporting requirements of the monitoring program. Monitoring details and records should be made available in the public domain.</p>	<p>Comment noted – activities authorised under the EMA framework will be subject to DEMIRS' risk-based compliance programme and may be subject to audits and/or site inspections to ensure that activities are being undertaken in accordance with the prescribed requirements.</p>
77.	Nature Conservation	<p>Regarding final rehabilitation, we note the regulations propose that 'applicants will not need to wait for DEMIRS' assessment of the Notice of Completion prior to submitting a new EMA notice.' We think this could inadvertently allow irresponsible behaviour, as it could mean that poorly rehabilitated areas and under-performing applicants are not discovered until further damage is done.</p> <p>We suggest instead a system that allows for a fast-tracking of a DEMIRS compliance audit (perhaps by payment of an additional fee) if an applicant wishes to submit a further application. It should also be stipulated that anything less than full compliance will not be acceptable. This will help to ensure activities are conducted and rehabilitated properly in accordance with the EMA notice and standard conditions, and that poor efforts are corrected prior to any further EMAs being allowed.</p>	<p>Comment noted, however, DEMIRS does not intend on imposing the requirement that it must review and sign off on every completion notice that is submitted, as this may limit the efficiency of the framework and reduce the intended benefits of redirecting officers time to high-risk compliance activities. Notwithstanding, DEMIRS will still have a robust audit programme for completion notices (which will then inform DEMIRS' broader compliance programme), especially during initial roll out of the framework.</p> <p>In addition, submission of a completion notice constitutes a legal declaration that all activities have been conducted and rehabilitated in accordance with the prescribed requirements. Where DEMIRS identifies that false or</p>

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			misleading information was provided, appropriate enforcement action will be undertaken.
78.	Western Australian Forest Alliance	The Regulations must contain clear and enforceable provisions.	<p>Section 103AE(1) of the (amended) Mining Act makes it a condition of every tenement that operators must not carry out an EMA other than in accordance with the prescribed requirements.</p> <p>The effect of this provision is that failure to comply with any of the prescribed requirements would constitute a breach of tenement conditions and render the tenement liable for forfeiture action.</p>
Excluded Areas			
79.	AMEC	<p>Private Land Consent</p> <p>It is unclear whether private land is excluded from having an EMA. AMEC considers that Private Land should not be excluded as consent to access ground will have to be sought. Noting that consent will also have to be from appropriate Native Title party holders, as well as other considerations under the <i>Aboriginal Heritage Act 1972</i>.</p> <p>Similarly to excess tonnage, the exclusion of private land could lead to unintended consequences. For example, in the situation where the landowner is seeking the EMA they will face the delay of the Programme of Work. A discretion to apply for an EMA if consent can be documented should be considered in the future.</p>	<p>Comments are noted, however in the initial roll out of the EMA framework (and associated system build), the intention is to exclude private land, as consent to access private land is an important consideration when authorising activities and at this point in time, should still be checked by an environmental officer.</p> <p>This matter has been identified as a consideration for future releases however.</p>
80.	AMEC	The gazettal of excluded areas is an appropriate mechanism for defining what is included and excluded. The publication of these areas on the DEMIRS website and as a layer on TENGRAPH would be welcome. While it is not clarified explicitly in the documentation it is assumed that this would be standard practice by the Department.	DEMIRS confirms the intent is for the excluded area layer to be publicly viewable.
81.	AMEC	The provision of information sheets was a helpful addition. However, further information is sought regarding the areas coloured orange on the information sheet - Proponent to be notified but EMA not prevented - other flora/fauna/communities? How will this work? More detail would be welcome, noting that this detail should not be included in the regulation.	The intent of the notification layer is to provide prompts and/or information to applicants where there may be something in the area that may require another approval under another regulatory framework. As an example, this is how heritage matters (regulated under the <i>Aboriginal Heritage Act 1972</i>) will be managed under the EMA Framework. Where a heritage site is intersected,

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			<p>applicants will not be precluded from lodging the EMA notice (provided no excluded areas are intersected), however, the system will provide a notification that further consultation and/or approvals may be required from DPLH.</p> <p>DEMIRS is continuing to liaise with other Government agencies on the data that will comprise this notification layer.</p>
82.	AWC	<p>Currently, the EMA Excluded and Notification Areas shown in Figure 1 of the Information Sheet do not include parts of the exceptionally high conservation value Mt Gibson Wildlife Sanctuary (29.60°S, 117.41°W) located between Monger's Lake and Lake Moore, and surrounding properties managed for conservation within the region (for example Bush Heritage Australia's Charles Darwin Reserve). Mt Gibson Wildlife Sanctuary is the site of a significant threatened mammal restoration project, including the reintroduction of eight threatened and one not-threatened but locally-extinct mammal species within an ~8,000 ha feral predator-free fenced area and the reintroduction of two threatened and one not-threatened but locally-extinct mammal species across the wider ~130,000 ha property (Table 1). Mt Gibson Wildlife Sanctuary contains extensive areas of the Critically Endangered Eucalypt Woodlands of the Western Australian Wheatbelt, both within and outside the fenced enclosure. Two of the extant fauna species present on Mt Gibson, Western Spiny-tailed Skink (<i>Egernia stokesii badia</i>) and Malleefowl (<i>Leipoa ocellata</i>), are listed as threatened nationally. Of the 700-800 plant species that occur on the sanctuary, 50 or more are of some level of conservation concern. Based on the conservation values of the property, we request that the whole property be explicitly included within the EMA Excluded Areas. This will require only a minor change to the map. We provide the required property boundary and fenced enclosure boundary shape files to facilitate this request. Stating that the EMA authorisation does not authorise the disturbance of threatened species or modification of a TEC and will be regulated by a self-assessment against the <i>Biodiversity Conservation Act 2016</i> does not go far enough. This is a property with important known populations of species and ecological</p>	<p>DEMIRS is not currently proposing to include privately-owned properties (where these properties don't meet the definition of private land under the Mining Act) managed for conservation purposes as a blanket exclusion under the EMA Framework.</p> <p>DEMIRS recognises the environmental values of these areas and has developed a suite of strategies to minimise environmental impacts (outlined further below), whilst also attempting to find a balance with facilitating legal access (where a tenement has been validly granted) to crown land.</p> <p>In submitting an EMA Notice, applicants will be excluded from undertaking activities in areas that contain/intersect:</p> <ul style="list-style-type: none"> - Environmentally Sensitive Areas - Threatened and Priority Ecological Communities - Threatened and Priority Fauna - Threatened and Priority Flora. <p>Where an EMA notice is validly submitted, the applicant is obliged to undertake their activities in accordance with a range of management strategies such as, avoiding large trees and riparian vegetation and avoiding and minimising all vegetation clearing.</p>

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		<p>communities of conservation significance that need to be reflected in the EMA Excluded Areas map.</p> <p>We have presented the situation at Mt Gibson sanctuary as a case study here but want to emphasise that this is not a unique situation. For instance, Australian Wildlife Conservancy currently manages 10 sites in Western Australia spanning approximately 4,395,750ha, similarly Bush Heritage manages nine sites here covering a further 307,959ha and there are other organisations managing land for conservation. Therefore, we request that DMIRS additionally consider extending Excluded Areas to include privately-owned properties managed explicitly for conservation purposes in addition to the currently listed Crown Reserves.</p>	<p>All EMA Notices submitted will include a notice to applicants notifying them of their obligations under the <i>Biodiversity Conservation Act 2016</i>, and encouraging them to complete field surveys to ensure they are compliant with their obligations under the BC Act. DBCA will also be provided with a record of all EMA Notices submitted.</p> <p>Applicants will also be obliged to comply with all tenement conditions, which, for the majority of AWC managed areas, includes an obligation to notify AWC prior to undertaking airborne geophysical surveys or any ground disturbing activities.</p> <p>Finally, DEMIRS will continually review and refine the EMA excluded area layer to ensure it is functioning as intended. Where it is identified post-implementation that other areas should be incorporated, this will be explored and actioned.</p>
83.	BirdLife Australia	<p>While draft regulation 58E - Prohibited Activities – specifies that riparian vegetation and potential black cockatoo nest trees (>300 mm @ 500 mm above ground level) must not be destroyed, no other specific habitat has been included. Research has shown that the removal of foraging habitat without replacement in the local area will perpetuate the decline of the already vulnerable three black cockatoo species.</p> <p>BirdLife Australia recommends the following additional protections:</p> <ul style="list-style-type: none"> - no black cockatoo foraging habitat should be cleared without assessment - no black cockatoo foraging habitat should be cleared within 6km of a confirmed/unconfirmed (reported) roost, and within 12km of confirmed/suspected current or historical breeding site. 	<p>In addition to the regulations specifically prohibiting the clearing of trees having a trunk diameter of 300 mm or more at a height of 1 300 mm above ground level, the regulations also require that applicants:</p> <ul style="list-style-type: none"> • avoid clearing native vegetation; • minimise the amount of native vegetation that is cleared; and • reduce the impact of clearing on any environmental value. <p>The EMA excluded area map has also been expanded to now exclude almost the entirety of the south-west (noting that the map is subject to further changes as DEMIRS continues to review and refine the framework).</p>

Ref #	Stakeholder	Comment	DEMIRS Response
			<p>In addition, authorisation of an EMA does not exempt an applicant from complying with obligations under all other State and Federal legislation.</p>
84.	CCWA	<p>The Proposed Amendment provides some exemptions for habitat, but it is very limited.</p> <p>The Proposed Amendment (p.6) prohibits damaging or destroying:</p> <ul style="list-style-type: none"> • riparian vegetation • trees with a trunk diameter ≥ 300 mm or a height $\geq 1,500$ mm above ground level <p>Additionally, the Proposed Amendment (p.7) prescribes that the EMA holder must adhere to the following principles:</p> <ol style="list-style-type: none"> (a) avoid clearing native vegetation; (b) minimise the amount of native vegetation that is cleared; (c) reduce the impact of clearing on any environmental value. <p>The exemptions extend to a very small range of environmental receptors, thus neglecting the vast diversity of environment in Western Australia. Further, the Proposed Amendment provides no tangible protections for the habitat it mentions. There are no requirements for management plans, compliance or fines if there is a failure of compliance. The Proposed Amendment thus leaves much of WA's environment unprotected. CCWA asserts that the significant impact that the Proposed Amendment will have on the WA environment is unacceptable.</p>	<p>Areas to be excluded from the EMA framework extend beyond those referenced in the regulations by way of the excluded area notice/s. Currently, DEMIRS is proposing to exclude the following areas from the EMA framework, which will protect a significant portion of environmental receptors in Western Australia:</p> <ul style="list-style-type: none"> - Reserved land (being land to which section 24, 24A or 25 of the <i>Mining Act 1978</i> applies). <i>Note: The Act itself precludes these areas from the EMA Framework.</i> - Proposed nature reserves - Environmentally Sensitive Areas - Threatened and Priority Ecological Communities - Threatened and Priority Fauna (including 50m buffer) - Threatened and Priority Flora (including 50m buffer) - Dieback areas - Public Drinking Water Source Areas - Clearing Control Catchments - CAWSA - Waterway Management Areas - Ramsar Sites - Wild Rivers - WA Heritage Sites - Freehold Land - Townsites (including 200m buffer) <p>Failure to comply with any of the prescribed requirements set out in the regulations is addressed via section 103AE(1) of the (amended) Mining Act which makes it a condition of every tenement that operators must not carry out an EMA other than in accordance with the prescribed requirements.</p>

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			<p>The effect of this provision is that failure to comply with any of the prescribed requirements would constitute a breach of tenement conditions and render the tenement liable for forfeiture action (which can extend to a fine or forfeiture of the tenement).</p>
85.	EDO	<p>The Information Sheet – Eligible Mining Activity Regulations includes a list of proposed areas to be excluded from the operation of the EMA framework by way of Gazettal notice. EDO supports this approach and the proposed list of excluded areas. However, we note the Draft Regulations do not include reference to excluded areas.</p> <p>Recommendation: The Draft Regulations should include a Regulation that states an EMA Notice cannot be applied for in an area listed in the gazetted Excluded Area Notice.</p>	<p>Exclusion of land from the EMA framework is addressed in section 103AC of the (amended) Mining Act which establishes that an EMA notice cannot be given in these areas.</p>
86.	EDO	<p>The Information Sheet also includes details of a proposed notification system where DEMIRS will maintain a list of Notification Areas which trigger approvals under other regulatory frameworks. We understand that when a tenement holder applies for an EMA within a Notification Area, the relevant agency will then be notified of the proposed activities.</p> <p>Although the Information Sheet is clear that an EMA does not authorise activities under other legislation, the requirement that a tenement holder submit a declaration with their EMA notice that they are aware of their obligations under other relevant pieces of legislation, could be strengthened.</p> <p>The Information Sheet includes the <i>Aboriginal Heritage Act 1972</i> (WA) as an example. In this instance the proposed declaration requires the applicant to obtain approval from the Department of Planning, Lands and Heritage prior to the commencement of activities.</p> <p>Operation of the EMA framework within Notification Areas can be strengthened. Rather than require an applicant to submit a declaration, the applicant should be required to obtain relevant approvals and submit them as attachments to their EMA notice. Amending the required steps in this manner would ensure all</p>	<p>Comment is noted, however, DEMIRS' view is that it is the applicant's responsibility to ensure they have sought all relevant approvals prior to commencing their activities. DEMIRS continues to work collaboratively with other Government agencies on this process to ensure there is adequate oversight and information sharing.</p>

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		assessments are completed and approvals sought prior to notice being provided to DEMIRS of the proposed activities.	
87.	Hetherington	<p>The DEMIRS Information Sheet sets out certain types of areas that will either be excluded from the EMA Framework or require further approvals under other legislation. This raises the following questions:</p> <p>a. Will areas that are deemed Excluded Areas be automatically excluded from an EMA notice?</p> <p>b. In the case of freehold land, what would the process be if a holder had obtained consent from the owner or occupier prior to serving an EMA Notice to essentially remove the Excluded Area?</p> <p>c. If an EMA Notice was served prior to obtaining consent from the owner or occupier, but consent has been secured subsequently, would the holder be required to lodge a new EMA Notice to include the excluded area?</p> <p>d. If required to serve a new EMA Notice, would the holder be able to withdraw the initial EMA Notice and replace it with the amended EMA Notice including the freehold land without consequence under regulation 58H(3)?</p> <p>e. Would the above also be applicable in the context of Notification Areas where a holder has sought/obtained the necessary approvals?</p> <p>f. What does freehold land mean in the context of Excluded Areas? Is this intended to operate the same as private land under the Mining Act?</p> <p>g. Will the Excluded Areas and Notification Areas be visible as a layer in Tengraph?</p> <p>h. What is the process if an area already granted for work under an existing EMA is subsequently re-defined as an Excluded Area?</p>	<p>a) An EMA will not be able to be lodged in an excluded area – this will be managed via the Resources Online system during submission.</p> <p>b) At this stage, the intention is to exclude private land irrespective of whether consent has been granted, as at this point in time, it is considered that this should still be checked by an environmental officer (and therefore not appropriate for an automated authorisation). This matter has been identified as a consideration for future releases however.</p> <p>c) and d) Per above, for release 1 of Resources Online, private land is excluded irrespective of whether consent has been granted. Applicants can still utilise programme of works for activities on private land.</p> <p>e) Applicants can still lodge an EMA in notification areas (provided they are not also in an excluded area). The intent of these areas is to notify applicants of their responsibilities under other regulatory frameworks, however it does not preclude the submission of a notice in these areas.</p> <p>f) Intended to capture private land under the Mining Act.</p> <p>g) Yes, the EMA excluded area layer will be publicly viewable in Tengraph.</p> <p>h) DEMIRS will review this matter and provide additional guidance in due course.</p>
88.	MBA	The areas identified that require proponent notification for Eligible Mining Activity (Fig. 1 of the EMA regulations) do not include all the mapped potential habitat of ABAB, as determined by DBCA (2020)	Whilst potential habitat for ABAB has not been explicitly excluded from the EMA framework, the following provisions within the EMA regulations are expected to

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		<p><i>Guideline for the survey of arid bronze azure butterfly (ABAB) in Western Australia.</i> Government of Western Australia.</p> <p>Consequently, mining activities will most likely occur on land containing populations of this threatened species and potentially others of conservation significance.</p> <p>Thus, clearing of key habitat of ABAB will almost certainly occur without any obligation to undertake surveys for the presence of this Critically Endangered species.</p>	<p>lower the potential risks to ABAB by avoiding impacts to mature eucalypts (and subsequently, lowering potential impacts to host ant colonies):</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; and - avoid and minimise clearing native vegetation. <p>Impacts to ABAB are also managed under the <i>Biodiversity Conservation Act 2016</i> (administered by the Department of Biodiversity, Conservation and Attractions – DBCA), where a Ministerial Authorisation is required to take or disturb ABAB. DEMIRS continues to work collaboratively with other Government agencies to minimise risks to threatened species under the EMA framework.</p> <p>In addition, one of the extant sites where ABAB occur (Barbalin Nature Reserve) will be excluded from the framework due to Nature Reserves being captured as an excluded area layer.</p>
89.	Nature Conservation	<p>Australia's southwest has been identified as one of 36 global biodiversity hotspots. Biodiversity hotspots are regions with exceptionally concentrations of endemic species - species found nowhere else on Earth – and are undergoing an exceptional loss of habitat. These areas are critical for global biodiversity conservation due to their unique ecological significance and the extent of loss already sustained (Mittermeier et al., 2011; Myers et al., 2000). As stated, in order to qualify as a global biodiversity hotspot, the region in question must have had significant loss of habitat and that habitat be under threat, which is a key factor in the critical importance of preserving the remaining biodiversity assets in southwest WA. The EMA regulations have significant potential impact on remaining biodiversity values.</p> <p>We note from the published map of exclusions in the information document that a considerable proportion of the hotspot region is already proposed to be excluded, but not in its entirety. Instead, there is a patchwork of areas within the hotspot region where the</p>	<p>Following stakeholder consultation, the excluded area map has been extended to capture more of the southwest (noting map is subject to further changes as DEMIRS continues to review and refine the framework).</p>

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		<p>framework might still be applied, and vegetation might be lost - on an ongoing basis - without any real consideration being given to the potential and cumulative environmental impacts. We strongly recommend that it would be significantly better and safer from an environmental perspective to simply exclude the entire southwest biodiversity hotspot region from the application of this framework.</p> <p>In particular, we believe the precautionary principle (Environmental Protection Authority (WA), 2016) should be applied in considering the loss of vegetation that is likely to occur by application of the proposed EMA framework in the southwest biodiversity hotspot region.</p> <p>Excluding the southwest biodiversity hotspot from automatic mining exploration approval will align with responsible and precautionary conservation approaches to help ensure the long-term survival of species and ecosystems in this critically important region.</p>	
90.	Rod Eastwood & Matt Williams	<p>Areas that will prompt a notification include “<i>areas where there is the potential for species or communities of conservation significance to occur</i>”. These are designated by orange shaded areas shown in Fig. 1 of the EMA regulations information sheet.</p> <p>However, these areas only cover a small part of the area that may contain the ant <i>Camponotus</i> sp.nr. <i>terebrans</i> which is host (critical habitat) for the Critically Endangered Arid Bronze Azure Butterfly (ABAB), <i>Ogyris petrina</i> (Lycaenidae).</p> <p>For additional information about ABAB see Appendix 1 below.</p> <p>ABAB is a rare species endemic to Western Australia and is listed as <i>Critically Endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) since 2015 and the Western Australia’s Wildlife Conservation Act 1950 (WC Act, now superseded by the Biodiversity Conservation Act 2016 (BC Act)) since 2008</i>. The butterfly was previously known as <i>Ogyris subterrestris petrina</i>, but recently shown to be a distinct species by Beaver et al. (2023).</p>	<p>Whilst potential habitat for ABAB has not been explicitly excluded from the EMA framework, the following provisions within the EMA regulations are expected to lower the potential risks to ABAB by avoiding impacts to mature eucalypts (and subsequently, lowering potential impacts to host ant colonies):</p> <ul style="list-style-type: none"> - not clear trees having a trunk diameter of 300 mm or more at a height of 1 300 mm; and - avoid and minimise clearing native vegetation. <p>Impacts to ABAB are also managed under the <i>Biodiversity Conservation Act 2016</i> (administered by the Department of Biodiversity, Conservation and Attractions – DBCA), where a Ministerial Authorisation is required to take or disturb ABAB. DEMIRS continues to work with DBCA to minimise risks to threatened species under the EMA framework.</p> <p>In addition, one of the extant sites where ABAB occur (Barbalin Nature Reserve) will be excluded from the</p>

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		<p>DBCA have produced several documents detailing recommendations for surveying for the butterfly, but first it is recommended to survey for the <i>Camponotus</i> ants (DBCA 2020).</p> <p>Surveys are required where vegetation clearing activities could potentially affect the species and/or suitable habitat. Suitable habitat is an area where there are smooth barked <i>Eucalyptus</i> trees together with nests of the ant <i>C. sp. nr. terebrans</i>. DBCA also published a map showing the range of <i>C. sp. nr. terebrans</i> in WA which includes all areas south of 26° S latitude, excluding the SW corner of WA.</p> <p>A desktop survey may be all that is required to determine if the proposed EMA site has smooth barked eucalypts present. If not, then the ants will not be present, and a physical survey not required. If smooth barked eucalypts are present, then a physical survey would only require one day to complete by a competent person and should include a 100 m buffer zone. A 100 m buffer zone rather than a 50 m buffer zone is recommended because the adult butterflies are often active outside the breeding site where males may establish mating territories.</p>	<p>framework due to Nature Reserves being captured as an excluded area layer.</p>
91.	Shenaye Hummerston	<p>A 50m buffer for known locations of priority flora is inadequate, considering these species are by definition rare and poorly known – survey deficient species.</p> <p>Allowing clearing and disturbance of habitats while protecting only a 50m buffer for known threatened flora locations without any assessment is completely inadequate. In most situations, this is likely to represent clearing of critical habitat for the threatened species. This is at odds with generally accepted standards for flora and vegetation survey and with what is usually required through local, state and federal government processes. For example, a federally listed species within 10km of a site would usually require a targeted survey before clearing or EPBC Act approvals. Stating that an authorisation of an EMA Notice under the Mining Act does not authorise activities and /or impacts under other legislation and that it is the proponents obligation simply absolves the Department of</p>	<p>Comment noted. The purpose of stating that authorisation of an EMA Notice under the Mining Act does not authorise activities and /or impacts under other legislation is to reiterate that it is an applicant's responsibility to ensure they have sought all other required approvals prior to commencing their activities and to avoid the perception that by receiving authorisation under an EMA notice, activities can commence without due consideration of other regulatory frameworks.</p> <p>DEMIRS is continuing to work with other government agencies to ensure that the framework is developed in such a way to minimise risk as far as possible.</p>

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		responsibility, while encouraging clearing and habitat fragmentation, without informed and considered decision making.	
92.	Western Australian Forest Alliance	<p>We welcome the exclusion of almost all forested areas from the EMA as in Figure 1: EMA Excluded and notification areas. Yet we hold concern that the map appears to show riparian zones amongst excluded areas (predominately in the South West) which are instead marked as “areas requiring proponent notification”.</p> <p>The Regulations must clarify whether this is meant to be read as an overlay, and that all notification areas surrounded by excluded areas are also excluded.</p>	DEMIRS acknowledges that the map provided with the consultation material was not clear and confirms that notification areas which overlay an excluded area will be excluded from the EMA Framework.
93.	Western Australian Forest Alliance	Notification Areas where there is potential for species or communities of conservation significance to occur should require surveys of the areas, not just recommend it as currently stated in Figure 3: Example notification when intersecting areas of potential conservation significance.	Comment noted. Whilst DEMIRS is not intending on mandating surveys to be undertaken, where an applicant is undertaking activities in these areas it remains their responsibility to ensure they are compliant with all other regulatory requirements, hence DEMIRS' recommendation that surveys are undertaken prior to the commencement of activities.
Final Comments			
94.	AMEC	<p>AMEC supports the delivery of Eligible Mining Activities in Australia as a sensible method of managing low risk activities that occur in non-environmentally sensitive areas. The EMA framework provides the Government with a pathway to shift resources from low-risk activities to higher risk activities while ensuring Western Australia maintains its high standards for environmental regulation.</p> <p>Furthermore, the drafted regulation promises greater clarity and certainty for proponents to invest in new mineral exploration projects and will also free up departmental resources to prioritise compliance and more complex approvals. The Department should be commended on their diligence in the production of these regulations, as such attention is necessary to deliver this reform before the 2025 State Election.</p>	DEMIRS thanks AMEC for its submission.
95.	CCWA	In view of the above points, CCWA recommends that the Mining Regulations Amendment 2024 be reviewed to address the	DEMIRS thanks CCWA for its submission.

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		<p>necessary environmental protections outlined in this submission, namely:</p> <ul style="list-style-type: none"> • The definition of low impact activities requires re-evaluation in regard to the need for environmental impact assessment. • Any residual and cumulative impacts of a proposal should be identified and evaluated through a rigorous environmental impact assessment process. • The protections provided by the Proposed Amendment require strengthening. • The Proposed Amendment requires stronger provisions for monitoring rehabilitation outcomes. 	
96.	CME	CME and our members remain committed to DEMIRS' ongoing consultation efforts and welcome further engagement to support the effective introduction of EMA.	DEMIRS thanks CME for its submission.
97.	EDO	<p>The introduction of an automated approval process for mining activities, even where those activities are intended to have low impact, is concerning. The removal of Departmental oversight through the replacement of environmental assessment officers with an automated system is prioritising efficiency over environmental protection.</p> <p>At the very least, the Draft Regulations should be strengthened to ensure obligations are clear, reporting is mandatory and compliance is monitored and enforced.</p>	DEMIRS thanks EDO for its submission and has addressed its key points in detailed sections above.
98.	MBA	In our view, the new EMA regulations will facilitate the destruction of important breeding habitat of ABAB. We therefore recommend the areas designated in the EMA regulations be expanded to include all potential habitat of the ABAB, as determined by DBCA.	DEMIRS thanks MBA for its submission and reiterates that DEMIRS continues to liaise with other government agencies on how to minimise the risk of impacts from the EMA framework and that the framework has been developed in such a way where there are multiple criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA), which DEMIRS feels will limit the risk of environmental impact from EMAs.

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			Notwithstanding, DEMIRS is committing to monitoring and reviewing the framework as it is implemented, to ensure it is functioning as intended. Where improvements or changes are identified as being needed, these will be implemented.
99.	Murdoch	<p>When assessing the appropriateness of any legislative changes that have the potential to threaten species persistence for black cockatoos, it will be important for the Government of Western Australia to ensure that assessments are informed by current data and modelling regarding the risks to each species from legislative changes, particularly in the context of increasing cumulative impacts to these species and their breeding and foraging habitat, from drought, fire and other climate-related risks as well as anthropogenic threats (e.g. ongoing clearing; illegal shooting; feral bees). Otherwise, legislative amendments are likely to exacerbate – rather than help to halt and reverse – black cockatoo declines.</p> <p>To date, government regulations and actions have not been adequate to support species recovery for black cockatoos. Given that these species need more habitat, not less, this is not the time to allow black cockatoo habitat to be cleared without a full assessment and mitigation of impacts, including prevention or mitigation of cumulative impacts. In recent regulatory assessments and decisions, DEMIRS has been increasingly attentive to the threats facing black cockatoos and the actions required to reverse their declines. We thank DEMIRS for this approach, and hope it will continue.</p>	DEMIRS thanks Murdoch for its submission. DEMIRS is committing to monitoring and reviewing the framework as it is implemented, to ensure it is functioning as intended. Where improvements or changes are identified as being needed, these will be implemented.
100.	Rod Eastwood & Matt Williams	As they stand, the EMA regulations will enable, indeed facilitate, the destruction of critical habitat of a nationally recognized endangered species.	DEMIRS thanks Mr Eastwood and Mr Williams for their submission and notes their concern regarding the EMA framework. The framework has been developed in such a way where there are multiple criteria and mitigating factors built into the framework (limits on types of activity, limits on location of activity and prescribed conditions that applicants must adhere to when undertaking an EMA), which DEMIRS feels will limit the risk of environmental impact from EMAs.

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			Notwithstanding, DEMIRS is committing to monitoring and reviewing the framework as it is implemented, to ensure it is functioning as intended. Where improvements or changes are identified as being needed, these will be implemented.

Government of Western Australia

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

8.30am – 4.30pm

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