



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

Information Sheet

Eligible Mining Activity Regulations

May 2024

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Information Sheet

Purpose

This information sheet provides guidance on key aspects of the *draft* Mining Regulations Amendment Regulations 2024 (EMA Regulations), which prescribe the requirements of the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) Eligible Mining Activity (EMA) framework.

Stakeholders are invited to review the draft regulations and provide feedback.

Background

A key feature of the *Mining Amendment Act 2022* (the Amendment Act) is the Eligible Mining Activity (EMA) framework, which is a new form of authorisation for certain minimal disturbance and low impact activities.

Under the EMA framework, mining tenement holders will be able to receive automatic authorisation to undertake certain eligible activities by serving an EMA Notice to DEMIRS.

The Amendment Act establishes that the requirements for a mining activity to be considered an EMA must be prescribed in the Mining Regulations 1981 (the Regulations).

Following stakeholder feedback on its EMA Framework Discussion Paper, published in December 2022, DEMIRS has made some revisions to the criteria for an EMA, which has informed drafting of the EMA Regulations.

The EMA Regulations also include minor consequential amendments to the Mining Rehabilitation Fund Regulation 2013.

Regulations Summary

Types of activities that can be EMAs - Regulations 58B and 58C

As the EMA framework is new, innovative and does not require environmental assessment by an Environmental Officer, the Department is restricting its use to prospecting and exploration activities as these activities are typically minimal in disturbance and do not result in lasting environmental impact.

The regulations prescribe the following activities as eligible activities:

- Drilling and activities associated with drilling including drill pads and sumps.
- Excavations (including scrape and detect operations, costeans and test pits) to a maximum depth of 4 metres.
- Access tracks required for any of the above activities.

Importantly, the definition of a low impact activity also includes rehabilitation of the above activities. This has the effect that an EMA Notice cannot be reported as 'complete' until the required rehabilitation has been undertaken.

Size of activity area - Regulation 58D(1)

The maximum cumulative area of activities that can be authorised under an EMA Notice is **two** hectares (ha).

An EMA notice may contain a number of eligible activities (such as drilling and excavations), however cumulatively, the size of these activities cannot exceed two ha per EMA notice.

Excavation/Tonnage limits - Regulation 58D(2)

When an EMA notice contains excavations, the maximum quantity of material that can be disturbed per EMA Notice is **1000 tonnes**.

This limit is to ensure excavations approved under the EMA framework are limited to lower impact activities, and to prevent large excavations being authorised.

There may be instances where excess tonnage may be required for activities authorised under an EMA notice. Issuing of an EMA notice does not authorise a tenement holder to disturb more than the approved tonnage limit per tenement.

Number of EMAs at one time - Regulation 58J(2)

A mining tenement may only have 2 EMA notices active on the tenement at any one time, where 'active' means that the Notice of Completion required under section 103AF of the (amended) Mining Act has not been submitted.

A notice of completion provides confirmation to DEMIRS that activities authorised under the EMA notice have been rehabilitated. Once the notice has been submitted to the Department, a new EMA Notice can be served on the tenement.

The limit of 2 active EMA notices at one time is intended to control the scale of low impact activities being authorised on a tenement at any point in time without assessment by DEMIRS, and ensure that larger scale activities continue to be progressed via more appropriate mechanisms such as Programme of Works.

Number of EMAs per financial year - Regulation 58J(3)

A mining tenement may only have 5 EMA notices served on the tenement per financial year.

Cumulative disturbance is a factor assessed by DEMIRS during its environmental assessment of mining activities, therefore, the intent of this limit is to control cumulative disturbance being authorised under the EMA Framework. Once this limit has been reached, exploration and prospecting activities can still be applied for under a Programme of Work.

The limit equates to approximately 10ha of activities per financial year which is consistent with the definition of low impact mineral activities in Schedule 1 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004.

Conditions

The regulations prescribe a number of conditions relating to management and rehabilitation of activities authorised under an EMA Notice. Activities must be undertaken in accordance with these conditions and failure to comply will render the relevant tenement liable for forfeiture.

Prohibited Activities - Regulation 58E

- The holder must not damage or destroy riparian vegetation.
- The holder must not damage or destroy trees that have a trunk diameter of 30 cm (or more) at a height of 1.5 m above ground level.

Explanatory Note: The intent of this regulation is to protect mature trees that may provide important fauna habitat in the form of tree hollows and roosting sites. This criteria only applies to trees that have a trunk diameter of >30cm at a height of 1.5m, it does not exclude clearing of other vegetation that may exceed 1.5m in height.

- In carrying out an EMA the holder must, in descending order of priority:
 - Avoid clearing native vegetation.
 - Minimise the amount of native vegetation cleared.
 - Reduce the impact of clearing on any environmental value.

Work Management Conditions - Regulation 58F

- The holder must contain and appropriately store intercepted groundwater and drill fluids.
- Drill holes are to be plugged immediately after being drilled and securely plugged, backfilled and mounded to prevent subsidence within 12 months of being drilled.
- Open excavations are to be managed to ensure fauna are not trapped.
- 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.
- All sample bags must be removed from the tenement either within 12 months from their initial placement or before any loss of structural integrity and/or decay occurs.
- All waste, rubbish, equipment, and structures associated with an EMA must be progressively removed from the tenement or disposed of in an appropriate manner as soon as is practicable (and in any event within 12 months of their initial placement).

Rehabilitation - Regulation 58G

- All ground disturbance (including soil compaction) resulting from an EMA must be rehabilitated within 12 months.
- Rehabilitation resources such as topsoil and cleared vegetation are to be harvested, stored and protected in a manner that maintains their viability for use in rehabilitation.
- Rehabilitated resources such as topsoil and cleared vegetation are to be re-spread over all cleared areas.
- All rehabilitated areas must be 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.

Records - Regulation 58H

- The holder must make and maintain records of the location, area, dates of activity and dates of rehabilitation and provide these records to DEMIRS upon request.

Notice of Completion - Regulation 58I

At the completion of activities and rehabilitation works authorised under an EMA notice, tenement holders must lodge a Notice of Completion to DEMIRS within **3 months**.

A notice of completion will require tenement holders to provide details of rehabilitation works completed demonstrating that rehabilitation works have been completed in accordance with prescribed requirements.

The approved form of a notice of completion will be submission through DEMIRS' online system. Submission of a notice of completion in the approved form, will constitute "giving notice to the Minister" for the purpose of the Mining Act, and applicants will not need to wait for DEMIRS' assessment of the Notice of Completion prior to submitting a new EMA notice.

DEMIRS will audit and undertake compliance checks of submitted Notices of Completion to ensure activities were conducted and rehabilitated in accordance with the EMA notice and standard conditions.

Other Information

Compliance with an EMA Notice

Pursuant to section 103AE of the (amended) Mining Act, it is a condition of every mining tenement that activities authorised under an EMA notice must be carried out in accordance with the requirements prescribed in the regulations. Failure to comply with the prescribed requirements will have the same effect as a breach of tenement conditions and render the tenement liable for forfeiture.

Consequential amendments to Mining Rehabilitation Fund Regulations 2013

The regulations released for stakeholder feedback also include minor consequential amendments to the Mining Rehabilitation Fund Regulations 2013 (MRF Regulations). The MRF Regulations will be amended to provide for works authorised under an EMA notice being included in the definition of “exploration operations”.

Excluded Areas and Notification Areas

Excluded Areas

There are number of areas throughout the State that will be excluded from the EMA Framework. These areas may contain environmental sensitivities that require assessment by an Environmental Officer or require confirmation of consent from a landholder (and therefore aren't suitable for an automated authorisation).

These areas will not be prescribed in the Regulations, rather, they will be included in an Excluded Area Notice, to be published in the Gazette by the Minister. Maintaining a list of excluded areas in the Gazette will enable DEMIRS to respond quickly in circumstances where new areas are identified that should be excluded from the EMA framework.

DEMIRS is proposing to exclude the following areas from the EMA framework (illustrated in Red in **Figure 1**).

- Crown Reserves
- Environmentally Sensitive Areas
- Threatened and Priority Ecological Communities
- Threatened and Priority Fauna (including 50m buffer)
- Threatened and Priority Flora (including 50m buffer)
- Forest Disease Area
- 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)

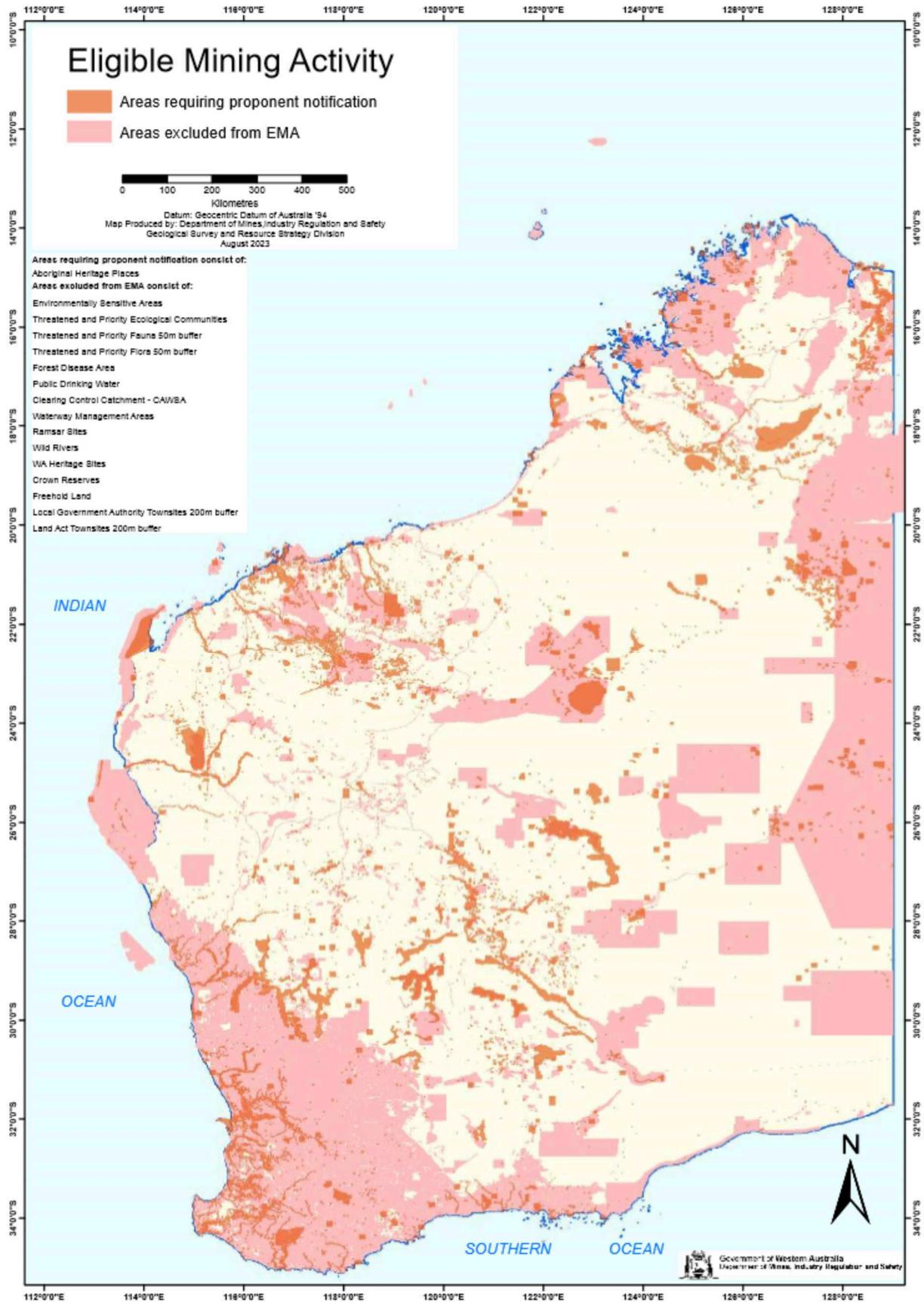


Figure 1: EMA Excluded and notification areas

Notification areas

It is important for applicants to be aware that 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.

In view of this, in addition to areas explicitly excluded from the EMA Framework, DEMIRS will maintain a list of 'Notification Areas' (illustrated in orange in **Figure 1**). These are areas that applicants will be able to lodge an EMA Notice in, however, there are features in that area that may trigger approvals under other regulatory frameworks.

DEMIRS continues to work collaboratively with other Government Agencies to determine what areas should be captured as a notification, however examples of areas that will prompt a notification include:

- Aboriginal Heritage Areas (Notification example in **Figure 2**)
- Areas where there is the potential for species or communities of conservation significance to occur (Notification example in **Figure 3**) *Note: not currently reflected in Image 1.*

Prior to lodging the EMA Notice, applicants will need to provide a declaration that they are aware of their obligations under the other, relevant, piece of legislation and upon submission, the relevant agency will be notified of the proposed activities in the area.

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Heritage Information

Records indicate your activities are located in areas where there is potential for impacts to Aboriginal Heritage Places and WA Heritage Sites.

Under the *Aboriginal Heritage Act 1972*, administered by the Department of Planning, Lands and Heritage (DPLH), consent is required from the Minister for Aboriginal Affairs for any activity which will impact Aboriginal heritage sites.

An Eligible Mining Activity Authorisation does not authorise you to impact Aboriginal Cultural Heritage Sites or WA Heritage Sites.

You must contact DPLH for advice prior to commencing your activities in this area. If required, no activities are to commence prior to relevant approvals being sought under the *Aboriginal Heritage Act 1972*.

Further information on your obligations under the *Aboriginal Heritage Act 1972* can be found in the Guidelines [here](#).

Please note that upon submission of this EMA notice, DPLH will be notified of your proposed activities in this area.

 *I acknowledge this EMA notice does not provide me consent to access Aboriginal Heritage Places and WA Heritage Sites. I must obtain approval from DPLH prior to commencement of activities.*

Figure 2: Example notification when intersecting Aboriginal Heritage Areas

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Additional Information

Obligations under the *Biodiversity Conservation Act 2016*

Please note, records indicate your activities are located in areas where there is the potential for species or communities of conservation significance to occur.

The *Biodiversity Conservation Act 2016* (BC Act) and Biodiversity Conservation Regulations 2018, administered by the Department of Biodiversity, Conservation and Attractions (DBCA) provide protection for biodiversity, particularly threatened species and threatened ecological communities (TECs).

Under the BC Act, you must not take or disturb a threatened species or modify a TEC unless you have an authorisation under the BC Act. Substantial penalties apply for impacts to threatened species and TECs without an authorisation (up to \$500,000).

An Eligible Mining Activity authorisation does not authorise you to take or disturb a threatened species or modify a TEC.

It is therefore recommended you undertake surveys of the area prior to undertaking any activities, to determine whether you require authorisation under the BC Act. For further information on what constitutes taking or disturbing a threatened species and/or modifying a TEC and how to obtain authorisation for these activities, please see [Threatened species and ecological communities \(www.wa.gov.au\)](http://www.wa.gov.au)

Please note that upon submission of this EMA notice, DBCA will be notified of your activities in the area.

Tick here to confirm you understand your legal obligations under the *Biodiversity Conservation Act 2016*

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Figure 3: Example notification when intersecting areas of potential conservation significance

Government of Western Australia

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and Safety**

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