



**GOVERNMENT OF WESTERN AUSTRALIA  
DEPARTMENT OF MINES, INDUSTRY REGULATION AND  
SAFETY  
CONSULTATION ON STREAMLINING (MINING AMENDMENT)  
BILL 2021**

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## Contents

About AusIMM .....	3
Summary .....	3
Key recommendations .....	4
Submission .....	4
Low impact activities .....	4
Conditions and approvals.....	4
Programmes of work .....	5
Mining operations .....	5
Significant mineralisation and the meaning of ‘reasonable prospects’ .....	5
Mining development and closure proposals.....	6
Mine Closure Plans .....	6
Approvals Statements .....	7
Additional matters .....	7
Consequential amendments .....	7
Coordination across government and regulatory frameworks .....	7

## About AusIMM

The Australasian Institute for Mining and Metallurgy (AusIMM) is the peak body for resources professionals, with over 13,000 members across more than 110 countries, including more than 4,100 based in Western Australia. Established under Royal Charter in 1893, we represent professionals across all levels of the mining industry, working from exploration through to delivery, and in disciplines ranging from mining engineering to geoscience, health and safety, finance, government and academia.

We lead the way for people in resources, supporting professionals to provide enduring benefits for the community. We are committed to upholding ethics, codes and standards in resources and delivering the highest quality of professional development to the sector.

As the trusted voice for resources professionals, we exercise shared leadership for the advancement of our sector and community. We advance our sector's continued technical and professional leadership on the global stage, champion community understanding and support for the sector, and work with governments to design, implement and maintain regulatory frameworks that facilitate the continued economic and social contributions delivered through mining.

## Summary

This submission is in response to the consultation currently being undertaken by the Government of Western Australia (Government) through the Department of Mines, Industry Regulation and Safety (Department) regarding the proposed Streamlining (Mining Amendment) Bill 2021 (Bill).

AusIMM commend the Government and Department for the consultative basis on which they have progressed the proposed reforms under the Bill. The Government's approach reflects a willingness to seek and listen to the best advice, and progress reforms on an open, well-informed basis. This is consistent with the Government's approach across a range of streamlining reforms.

The Bill proposes amendments to the *Mining Act 1978 (WA)* (Mining Act) to streamline mine approvals processes and regulations, with three key changes flagged:

- **Low impact notifications:** The Bill proposes an alternative authorisation pathway for low impact activities, according to which automatic authorisation is available for certain mechanised ground disturbances
- **Mining development and closure proposals:** The Bill introduces a single Mine Development and Closure Proposal to replace the currently separate Mining Proposal and Mine Closure Plan.
- **Approvals statements:** A new Approvals Statement will identify conditions, closure outcomes, review dates and related information, maintained on an ongoing basis.

**AusIMM support** the objectives of the reforms contained in the Bill. A streamlined and efficient approvals framework, which avoids unnecessary duplication, will support the continuing contributions made by the Western Australia resources sector professionals to the state's economy and community. Indeed, recent record-breaking sales results across iron ore, gold and nickel commodities are reminders of the sector's important role in the broader Australian economy, particularly as the nation navigates the COVID-19 pandemic.

Well-calibrated regulatory streamlining also enables consistent decision-making; balances social, economic and environmental considerations; and strengthens community confidence and support for the sector. In this respect, AusIMM emphasise that the resources approvals framework must balance efficiency with due rigour and risk-responsiveness.

Our Western Australian members account for more than 30% of AusIMM's overall membership, and includes leaders working across health, safety, mine closure, rehabilitation, environmental science and a range of other fields. With the benefit of this expertise, AusIMM offer the following recommendations regarding the Bill.

## **Key recommendations**

**AusIMM offer in-principle support** for the reforms proposed in the Bill. We emphasise that much of the substance of the reforms, and their effective implementation, is contingent on the clarity and rigour of subordinate legislation and associated regulatory guidance.

With this, **AusIMM recommend**:

1. That the Department undertake extensive consultation on the proposed regulations, guidelines and operational policies that will accompany the amended Mining Act.
2. That these regulations and related material clarify the:
  - a. Definition and scope of 'low impact activities.'
  - b. Standard conditions attached to 'low impact activities.'
  - c. Mechanisms by which cumulative impacts will be monitored and managed.
  - d. Criteria for assessment of 'significant mineralisation', which should reflect the JORC<sup>1</sup> and VALMIN Codes.<sup>2</sup>
  - e. Process for monitoring outcomes against Mine Development and Closure Proposals.
  - f. Process for monitoring outcomes and emerging risks in relation to Mine Closure Plans.
  - g. Scope and content of Approvals Statements.
3. That the Department continue to coordinate streamlining reforms across different regulatory frameworks and levels of government.

AusIMM repeat our view that the proposed reforms to the Mining Act are broadly well-calibrated and will provide an adequate primary legislative framework for balancing streamlined approvals with due rigour and regulatory oversight. Effectively implementation is contingent on the underlying regulatory provisions and operational processes adopted by the Department.

As the peak body for people in resources, AusIMM believe the Department must harness the skills and technical expertise of resources professionals across a range of disciplines to work through these further technical questions. We welcome further engagement with the Department as it progresses this substantial reform package.

## **Submission**

### ***Low impact activities***

#### ***Conditions and approvals***

The Bill proposes to introduce new provisions at Part IVAA Divisions 2 and 3 of the Mining Act, setting out the approvals process for low impact activities carried out under prospecting, exploring and retention licences, as well as mining and miscellaneous leases.

**AusIMM support** the broad objective to streamline approvals and simplify conditions for low impact activities

**AusIMM support** the proposed Ministerial discretion under the Mining Act to exclude certain areas as inappropriate for low impact activities. We see this discretion as critical in maintaining appropriate Ministerial oversight of the Mining Act and its implementation.

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<sup>1</sup> The 'JORC Code' is the shorthand nomination for The Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves, which is a professional code of practice that sets mining standards for public reporting of exploration results, resources and reserves.

<sup>2</sup> The 'VALMIN Code' is the shorthand nomination for the 'Australasian Code of Public Reporting of Technical Assessments and Valuations of Mineral Assets'.

AusIMM take the view that greater clarity is required before more detailed advice can be offered regarding the proposed provisions, particularly given activities will be prescribed as 'low impact' via regulation rather than through primary legislation. We understand the Department intends to undertake further public consultation on these regulations, separately to the Mining Act amendments.

**AusIMM recommend** the Department address, as part of this consultation, the precise scope and definition of 'low impact activities', the standards conditions attached to their approval (in detail), and the areas proposed to be excluded from the low impact approvals process.

**AusIMM recommend** that the regulatory provisions outlining 'low impact activities' account for the cumulative impact of disturbances across multiple individual sites and land uses. An extensive corpus of social, environmental, land use planning and mining industry expertise has developed over recent years, highlighting the need to consider the cumulative impacts when making decisions about land use planning.

Effectively managing cumulative impacts is a vital ingredient in driving community support for the sector. Communities expect governments and project proponents to manage the cumulative social, economic and environmental impacts of mining across the whole project life cycle. Cumulative impacts and whole-of-life planning are therefore vital considerations in delivering on the economic, social and environmental goals of streamlined regulation.<sup>3</sup>

A clear eye to cumulative impacts is also critical for the proper synthesis of mining, land use, environmental and planning regulation in the state.

### **Programmes of work**

**AusIMM support** the clear conditions articulated throughout Part IVAA Division 3 that low-impact activities cannot commence until either notice of the relevant activity is provided to the Department (in the prescribed form), or the activity is included in an approved Programme of Work. AusIMM note, and support, the provisions clarifying the extension of this authorisation to activities identified in the relevant Mine Development and Closure Proposal.

AusIMM repeat our caution that the Department must maintain robust oversight of low-impact activities carried out under these provisions, given the potential significance of cumulative impacts and the fact that low-impact activities will commence after notification (rather than formal approval).

**AusIMM support** provisions in Part IVAA Division 3 clarifying that those activities that do not meet the 'low impact' definition can only be carried out if they form part of an approved Programme of Work, and only then in the manner articulated in that Programme of Work.

**AusIMM support** the proposed process for lodging and assessing Programmes of Work, including provisions enabling lodgement of substitute programmes where the Department or Minister requires further information. This will allow approvals processes to progress efficiently, particularly where decision-makers require further information from prospective land users.

### **Mining operations**

#### **Significant mineralisation and the meaning of 'reasonable prospects'**

The Bill proposes a series of amendments to Part IV Division 3 of the Mining Act, which deals with mining leases. These include various consequential amendments to remove redundant

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<sup>3</sup> See, for example, Vogel, P, 2014, 'Cumulative environmental impacts of development in the Pilbara region: Advice of the Environmental Protection Authority to Minister for Environment under Section 16(e) of the *Environmental Protection Act 1986*', Environmental Protection Authority, Perth, Western Australia.

definitions, while retaining the concept of 'significant mineralisation' to frame the operation of the Division.

**AusIMM support** the definition of 'significant mineralisation' contained in the Bill, noting it is broadly consistent with the definition previously in place. Under this definition, significant mineralisation exists where the exploration results for land subject to a mining lease application indicate a 'reasonable prospect of minerals being obtained by mining operations on the land'.

**AusIMM recommend** the Department provide further guidance on what constitutes a 'reasonable prospect' of 'significant mineralisation'. These are complex technical questions that demand significant technical and professional expertise, and which must align with broader technical frameworks such as the JORC and VALMIN Codes. Such clarity and alignment are vital to guide decision-making and ensure transparency for both the industry and the community.

**AusIMM recommend** the Department collaborate with lead professionals in the sector to develop clear, plain English guidelines on the operation of the Mining Act (as amended by the Bill), including in relation to the meaning of 'significant mineralisation'.

**AusIMM query** deletion of the requirement for the Director-General to ensure guidelines regarding the operation of the Division are made publicly available. We encourage the Department to publish all guidelines publicly, as this is vital in enabling community understanding, awareness and support for mining operations in the state.

### ***Mining development and closure proposals***

The Bill proposes a new Part IVA Division 4 to the Mining Act, which replaces the separate Mining Proposal and Mine Closure Plan with a single Mining Development and Closure Proposal.

**AusIMM support** the introduction of a single Mining Development and Closure Proposal.

**AusIMM recommend** the Department establish a clear process for auditing and progressively reviewing operations against Mining Development and Closure Outcomes. Whether legislated or managed administratively, the process, key dates and review triggers for each project must be clearly established at the time of approval. These key project milestones should also be open to review on an ongoing basis as operational conditions change.

### ***Mine Closure Plans***

Further to the Mine Development and Closure Proposal, the Bill introduces a further requirement to lodge a Mine Closure Plan dealing specifically with mine decommissioning, land rehabilitation and closure outcomes at a later stage in the operational life cycle. The date for lodging a Mine Closure Plan will be identified upon approval of the Mining Development and Closure Proposal.

**AusIMM support** the proposal to ensure a comprehensive Mine Closure Plan is provided at an appropriate point during the mining lifecycle, and agree that this plan should be based on the closure outcomes articulated at the time of lodging the Mine Development and Closure Proposal.

**AusIMM recommend** the Department develop, consult on and articulate a clear policy for identifying trigger points to audit and assess progress against the Mine Closure Plan. This is particularly critical given the Bill removes the current three-year automatic review timeline.

AusIMM appreciate that a case-by-case approach supports efficiency. We caution, however, that a transparent process and clear articulation of the financial, social, environmental and other risk factors to be weighed in monitoring mine closure is vital to ensure effective regulatory implementation and support community confidence.

## Approvals Statements

The Bill proposes a single Approvals Statement, which will function as the ‘point of truth’ for approved mining operations, conditions, closure outcomes and review dates.

AusIMM note that this reform reflects changes made to the *Environmental Protection Act 1986 (WA)* to clarify the interrelationship between environmental, mining and other land use approvals.

**AusIMM support** the consolidation of Mining Act approvals into a single Approvals Statement, recognising that this will provide clarity for all stakeholders engaged in the mining (and broader land use planning) approvals process.

**AusIMM recommend** the Department undertake further consultation on the precise scope of the Approvals Statement, as part of the next tranche of consultation on these reforms. A detailed understanding of the contents of Approvals Statements is necessary to ensure they interact appropriately with the *Environmental Protection Act* and other legislation.

## Additional matters

### Consequential amendments

**AusIMM support** amendments to sections Part IV Divisions 1, 2, and 2A of the Mining Act, which facilitate automatic approval and conditioning for prospecting, exploration and retention licenses. We note many of these amendments are consequential on the more substantive amendments introduced elsewhere in the Act, and defer to our earlier comments on these provisions.

**AusIMM support** the amendments proposed to Division 3 to replace references to Mining Proposals with reference to Mine Development and Closure Proposals.

**AusIMM support** the continued reliance upon the Joint Ore Reserve Committee (JORC) Code as the basis for mineralisation reports to produced and referenced in assessing applications.

### Coordination across government and regulatory frameworks

The Western Australian Government has identified economic recovery and improved transparency as key drivers for the streamlined approvals reform.

**AusIMM support** this objective. Our view is that structural reforms to reduce unnecessary duplication must be coordinated across all levels of government (local, state and federal) as well as the distinct legislative frameworks covering mining, environmental regulation, natural resource management and land use more broadly.

**AusIMM recommend** that local governments, the Western Australian and Federal Governments continue to coordinate initiatives to streamline regulation on an ongoing basis, balancing the imperatives to minimise burden while retaining robust regulatory outcomes and providing enduring economic and social value for the community.

**AusIMM invite** further engagement with the Department as it progresses to the further and, indeed, more technically rigorous stages of these reforms. We repeat our thanks to the Government for the opportunity to provide our initial advice on the Bill.