

30 April 2021

Ms Karen Caple  
Executive Director  
Resource and Environmental Compliance  
Mineral House, 100 Plain Street  
East Perth WA 6004

Sent via email: [REC.Consultation@dmirs.wa.gov.au](mailto:REC.Consultation@dmirs.wa.gov.au)

Dear Ms Caple,

## SUBMISSION ON DRAFT MINE CLOSURE COMPLETION GUIDELINE

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 86 per cent of the State's mineral and energy workforce employment.<sup>1</sup>

CME welcomes the opportunity to provide a submission to the Department of Mines, Industry Regulation and Safety (DMIRS) on the 'Draft Mine Closure Completion Guideline' (the Guideline) released 15 February 2021. The Draft Guideline provides guidance to proponents on the evidence required to demonstrate compliance with closure obligations under the *Mining Act 1978* (Mining Act) and approved mine closure plan in order to receive formal acceptance from DMIRS.

In preparing this submission, CME has sought feedback from member companies. This submission firstly provides general comments on the Guideline followed by feedback on specific content in **Appendix I**.

### Whole-of-government approach

A whole-of-government approach with a clearly defined pathway to achieving closure and relinquishment is required. The Guideline does not represent a whole-of-government approach.

The Guideline applies only to the rehabilitation and closure obligations in Mine Closure Plans approved under the Mining Act and the assessment and approval of evidence of completion by DMIRS. The Guideline does not consider other legislation under which rehabilitation and closure obligations can be imposed, or the role of other agencies as regulatory stakeholders and/or post-mining land managers (refer **Table 1**).

**Table 1:** Regulatory instruments under which rehabilitation and closure obligations can be imposed (non-exhaustive list).

Regulatory instrument	Legislation	Administering agency	Stakeholders*
Mining Proposal / Mine Closure Plan	<i>Mining Act 1978</i>	DMIRS	DWER DBCA (Crown reserved lands) DPLH
Programme of Work	<i>Mining Act 1978</i>	DMIRS	DBCA (Crown reserved lands) DPLH

<sup>1</sup> Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

Regulatory instrument	Legislation	Administering agency	Stakeholders*
Mining tenement conditions	<i>Mining Act 1978</i>	DMIRS	DWER DBCA (Crown reserved lands) DPLH
Part IV Ministerial Statement	<i>Environmental Protection Act 1986</i>	DWER	EPA DBCA (Crown reserved lands) DPLH
Native Vegetation Clearing Permit	<i>Environmental Protection Act 1986</i>	DWER / DMIRS	DBCA (Crown reserved lands)
Part V Works Approval and Licence	<i>Environmental Protection Act 1986</i>	DWER	DMIRS DBCA (Crown reserved lands) DPLH
Closure Notice	<i>Environmental Protection Act 1986</i>	DWER	DMIRS DBCA (Crown reserved lands) DPLH
Permit to interfere with bed and banks (Section 11, 17, 21A)	<i>Rights in Water and Irrigation Act 1914</i>	DWER	DMIRS DBCA (Crown reserved lands) DPLH
State Agreement and State Agreement tenure conditions	Relevant State Agreement Act	DJTSI	DMIRS DWER DBCA (Crown reserved lands) DPLH
Remedial Action Plan / Site Management Plan	<i>Contaminated Sites Act 2003</i>	DWER	DMIRS DBCA (Crown reserved lands) DPLH
Tenure conditions	<i>Land Administration Act 1997</i>	DPLH	DWER DMIRS DBCA (Crown reserved lands)

\*Department of Water and Environmental Regulation (DWER); Department of Biodiversity, Conservation and Attractions (DBCA); Department of Jobs, Tourism, Science and Innovation (DJTSI); Department of Planning, Lands and Heritage (DPLH); Environmental Protection Agency (EPA). Stakeholders and role (as regulatory stakeholder and/or post-mining land manager) is dependent on activity and location.

A whole-of-government approach is needed for the assessment and approval of evidence for the completion of rehabilitation and closure obligations. Siloed assessments by individual regulatory agencies can lead to misalignment of stakeholder expectations, duplicative assessment and reporting requirements, delays and unnecessary additional administrative and cost imposts to proponents and regulators.

**CME recommends a whole-of-government approach to assessment and approval of evidence for the completion of rehabilitation and closure obligations.**

**CME strongly recommends the Guideline outline the process whereby DMIRS, as the lead assessment agency, undertakes consultation and obtains agreement with other regulatory agencies which are stakeholders and/or post-mining land managers.**

## Scope of application

The scope of the Guideline appears to be limited to projects with a Mining Proposal and associated Mine Closure Plan approved under the *Mining Act 1978* (the Mining Act). The Guideline states that it does not apply to disturbances that are the result of activities approved under Programmes of Work.

It is unclear whether the Guideline applies in other situations such as to State Agreement tenure and all mining tenements granted under the Mining Act for which Mining Proposals may exist and how the guideline will apply to historic operations that have already ceased operations.

**CME recommends the Guideline be revised to clarify the scope of its application.**

## Closure and relinquishment pathway

The signoff of rehabilitation and closure obligations is a broadly recognised pre-requisite to relinquishment; however, the Guideline lacks clarity regarding its link to the pathway for closure and relinquishment.

How the development, assessment, and approval of a Mine Completion Closure Report is connected to and aligned with the broader closure and relinquishment pathway needs to be detailed.

**CME recommends the Guideline be revised to detail how the development, assessment, and approval of a Mine Completion Closure Report fits into the broader closure and relinquishment pathway.**

In the development of a much needed whole-of-government pathway to closure and relinquishment, further work should be undertaken to consider the relinquishment pathway more holistically and investigate issues including, but not limited to, residual risks, and refinement and usage of the Mining Rehabilitation Fund. CME looks forward to working with Government to further this important reform work.

## Changing stakeholder expectations

Changing stakeholder expectations present a significant risk to industry in planning for and achieving successful closure and relinquishment. During the assessment of a Mine Completion Closure Report, proponents have experienced unexpected delays due to changing regulator expectations regarding agreed completion criteria and evidence requirements. Clarification is required that agreed completion criteria will not be amended at the Mine Completion Closure Report assessment stage unless mutually agreed.

**CME recommends the Guideline be revised to clarify that agreed completion criteria cannot be amended during assessment of a Mine Completion Closure Report.**

## Consistency and practicability

The Guideline is sufficiently high level to enable proponents the flexibility to apply the Guideline in a fit-for-purpose manner without undue administrative prescription and reporting burden. However, this presents the risk of inconsistent interpretation and application by Assessing Officers. An effective, clearly defined dispute resolution process is needed for situations where, despite best efforts, inconsistent interpretation and application has occurred.

CME supports flexibility for proponents to apply the Guideline in a fit-for-purpose manner, however, **strongly recommends regulator staff are sufficiently aligned in their interpretation of the Guideline to ensure consistency and practicability of application across industry.**

**CME recommends a clear dispute resolution process be defined to provide proponents an avenue for addressing inconsistent interpretation and/or application of the Guideline.**

## Conclusion

CME thanks DMIRS for the opportunity to comment on the Guideline and looks forward to continuing to work with DMIRS through this reform process.

Should you have questions regarding this letter, please contact Kira Sorensen, Senior Adviser – Environment & Sustainability.

Yours sincerely,

**Robert Carruthers**

Director – Policy & Advocacy

*Attached: Appendix I - Detailed responses to Draft Guideline*

## APPENDIX I

Table 2: Detailed responses to Draft Guideline.

Section	Response
<b>1 Purpose</b>	<p>The process for assessment and approval of a Mine Closure Completion Report is not described. The process should include a timebound requirement for DMIRS to formally acknowledge receipt, whereby DMIRS confirms:</p> <ul style="list-style-type: none"> <li>- The lodged Mine Closure Completion Report is conforming, or, if non-conforming, the way/s in which it does not conform to the requirements of the Guideline</li> <li>- The proposed timeline for assessment of the lodged Report by DMIRS</li> <li>- The nominated DMIRS Assessing Officer as the ongoing point of contact for the proponent.</li> </ul> <p>The process should include feedback loops and take no longer than six (6) months from lodgement of a conforming Report with DMIRS to approval unless otherwise agreed with the Proponent.</p> <p><b>CME recommends the Guideline be revised to outline the assessment and approval process for a Mine Closure Completion Report.</b></p>
<b>2 Objectives</b>	<p>The intent of the objective “the information required by DMIRS for formal acceptance that rehabilitation of mine sites has been completed, in the form of a Mine Closure Completion Report” (p3) is unclear and is not linked to broader closure obligations (only rehabilitation).</p> <p><b>CME recommends rewording the objective to encompass broader closure obligations as well as rehabilitation:</b></p> <p>“the information required by DMIRS for formal acceptance that <u>agreed closure obligations</u> of mine sites have been achieved, in the form of a Mine Closure Completion Report”.</p>
<b>3 Scope</b>	See above
<b>4 Regulatory Context</b> <i>4.3 Contaminated Sites Act</i>	<p>The Guideline states that it does not cover the regulatory process under the <i>Contaminated Sites Act 2003</i> (the CS Act). However, where a contaminated site assessment is completed as required under the CS Act, the Guideline lacks clarity as to whether evidence of the completed assessment is required to be included in the Mine Closure Completion Report.</p> <p><b>CME recommends the Guideline be revised to clarify whether evidence of a completed contaminated site assessment (as required under the CS Act) is required to be included in the Mine Closure Completion Report.</b></p>
<b>5 Guideline</b>	<p><b>CME recommends revising the subheadings to 5.1, 5.2, 5.3, etc. to better align with the formatting of the document.</b></p> <p><b>CME supports application of the Guideline for progressive closure and signoff.</b></p>

Section	Response
5.3 Stakeholder Engagement	<p>The Guideline states that:</p> <p>“The Department’s standard requirement is that all equipment and infrastructure is removed and/or appropriately disposed.”</p> <p>This statement does accurately reflect the application of this standard requirement for surface equipment and infrastructure only (not underground / buried infrastructure).</p> <p><b>CME recommends rewording to “The Department’s standard requirement is that all <u>surface</u> equipment and infrastructure is removed and/or appropriately disposed.”</b></p> <p>The Guideline lacks clarity regarding the process and timing of “formal transfer” of infrastructure to a third party.</p> <p>Clarity is required as to whether “formal transfer” equates to “legal transfer” of a relevant lands interest containing the retained infrastructure.</p> <p>Furthermore, the logical sequencing of these “formal transfers” requires reconsideration. The “transfer” of land interests holding retained infrastructure cannot be undertaken when relinquishment has not yet occurred, and so formal evidence of this “transfer” is unable to be provided in a Mine Closure Completion Report as a prerequisite to relinquishment.</p> <p><b>CME recommends the Guideline be revised to clarify the context of the term “formal transfer” of infrastructure to a third party.</b></p> <p><b>CME recommends the Guideline be revised to provide clarity regarding the process and timing of “formal transfer” of infrastructure to a third party.</b></p>
5.4 Post-Mining Land Use	<p>The Guideline does not adequately consider the timeline of closure requirements. The requirements to demonstrate the post-mining land use having been achieved prior to lodgement of the Mine Completion Closure Report is unachievable in many cases, particularly for alternative land uses which require complete cessation of all mine closure / monitoring activity and relinquishment of the mining tenure before they can occur.</p> <p>Proponents are responsible for identifying post-mining land uses and delivering outcomes that enable those land uses. The post-mining landowner and/or land manager is responsible for the appropriate tenure and actual use of the land post relinquishment.</p> <p><b>CME recommends the Guideline be reworded to “This section may discuss potential post-mining land uses that align with the completion criteria; however, it should be noted that appropriate tenure and actual use of the post-mining land will remain the responsibility of the post-mining landowner and/or land manager.”</b></p>

Section	Response
5.5 Closure Outcomes and Completion Criteria	<p>The Guideline lacks clarity regarding how evidence is to be provided. It is unclear whether evidence must be provided in full as appendices, or whether the provision of a Verification Report from an auditor who has assessed the evidence is sufficient.</p> <p>CME recommends the Guideline be revised to provide further clarity as to how supporting evidence / information is required to be provided.</p> <p>CME recommends the Guideline be revised to clarify how an auditor's Verification Report is to be considered in the context the provision of supporting evidence.</p>