Minerals Council of Australia
NORTHERN TERRITORY DIVISION

1 March 2021

Ms Jo Townsend, CEO
Department of Environment, Parks and Water Security
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Emailed to joanne.townsend@nt.gov.au and ntepa.consult@nt.gov.au

Dear Ms Townsend

RE: Comments on consultation draft *Regulation of mining activities – Environmental regulatory reform (December 2020)*

Thank you for the opportunity to comment on the draft report *Regulation of mining activities – Environmental regulatory reform* released in December 2020.

As the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, the MCA advocates policies and practices to deliver a safe, profitable, innovative, environmentally responsible industry that is attuned to community needs and expectations.

A risk-based, transparent and efficient regulatory framework for mining should improve the attractiveness of the Northern Territory for investment in mineral projects, contributing to the government's ambitious objective in the final report of the Territory Economic Reconstruction Commission, to grow the Territory's economy to $40 billion by 2030. This report identified the minerals sector as one of the key industries to underpin the Territory's post-pandemic economic recovery.

Environmental regulation

Comprehensive assessments of risk are the most efficient and effective foundations for environmental rules and regulations. The MCA NT therefore endorses the proposed tiered licensing and regulatory scheme, based on assessment of risk. This approach has the potential to streamline regulation of environmental impacts from mining activities if implemented by adequately-resourced officers with appropriate experience, knowledge and expertise in mineral projects, particularly at mines in the Northern Territory.

For this reason, the proposal for regulators to be drawn from, and based in, the Department of Environment, Parks and Water Security (DEPWS) would be complicated and counterproductive. Mineral projects involve a number of unique activities and methods and equipment to avoid or mitigate associated impacts, many of which are also unique to mining (e.g. acid mine drainage).

Mining jurisdictions around Australia have seen the benefit for both environmental outcomes and investment in generally maintaining environmental regulatory oversight inside the mine lease to relevant mining authorities which in turn work with environmental authorities on the impacts of mining outside the lease. The MCA NT urges government take a similar approach.

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The MCA NT advocates that once approval has been given to the mining lease to start, that all approvals of activity and incident be governed by the Mines Branch in the NT Department of Industry, Tourism and Trade (DITT), and all approvals or incidents with impacts outside the lease area are governed by the Environment Protection Division of DEPWS.

Further, mining in the Territory also differs from mining elsewhere in terms of particular regulatory settings and the nature and operation of the Territory's land councils in their interaction with the minerals sector. Approximately 47% of land in the Northern Territory is Aboriginal freehold under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). More than any other jurisdiction, the complexity and importance of effective engagement in the negotiation of environmental management objectives and outcomes cannot be overstated. The Mines Branch has developed over many years strong relationships with the Territory's traditional owners, within the context of development of mines in the Territory (and their environmental management). This considerable experience, and expertise should be maintained with the current structures.

Mining site rehabilitation

The MCA NT supports the approaches proposed in the consultation draft in relation to DITT administering streamlined and focused processes for authorising mine site development and mining activity extraction, decommissioning, and security bond administration.

However MCA NT remains concerned that the substantial Mine Remediation Fund (approximately $42-43 million at present), established through company contributions since 2013 is not being used properly. To date less than 6 per cent of the fund has been used to ameliorate legacy mines. Legacy mine management should be guided by a strategic expenditure plan developed under the auspices of an independent expert board or advisory panel of industry representatives, including from the extractives sector.

Additional detailed comments from the MCA NT have summarised in Attachment A, and responses to questions posed in the consultation draft document are in Attachment B.

Overall, the MCA NT suggests the proposed improvements to regulation of environmental management of mining activities can result in the desired improvements for which the current reforms are being proposed if the regulators have adequate expertise and experience and continue to be based in the Mines Branch of DITT.

The MCA NT welcomes the opportunity to discuss the feedback in this submission.

Once this submission has been reviewed and decisions made regarding its recommendations, the MCA NT would welcome feedback on which, if any, have not been accepted and a statement of reasons.

We also wish to express our interest in continuing engagement with DEPWS and DITT in the further development of the Territory's regulatory framework for mining in the NT. This includes revisiting the provisions in the Environment Protection Regulations that allow the NT EPA to escalate the level of an environmental impact assessment from a Supplementary Environmental Report to an Environmental Impact Statement at any time during the EIA, even at the very last stage when the NT EPA is due to issue its Environmental Assessment Report. This continues to be a significant concern for our industry, as the uncertainty inherent in such regulation comprises a material disincentive for potential investors.

Should you need further information, please do not hesitate to contact me on 08 8981 4486 or Janice.warren@minerals.org.au.

Yours sincerely,

DREW WAGNER
Executive Director

ATTACHMENT A

Summary of key comments from MCA NT on draft *Regulation of mining activities: Environmental regulatory reform (December 2020)*

Page reference	Issue	Comment
2. Principles and objectives of reform P 1, bottom of page	The NT Government's regulatory reform program is underpinned by 3 objectives: • Improved investor certainty • Better environmental outcomes • Building community confidence	A fourth objective should be added: • Improved regulatory efficiency
2. Principles and objectives of reform P 2, bottom of page	Merit reviews for decisions made under provisions of the *Mining Management Act*	Merit reviews must be limited to applicants and directly-affected persons. Standing should not be granted to persons merely on the basis that the person has made a submission during public consultation.
	For reforms to be successful, a change in process and practice within government departments will also be required	(a) The MCA NT has always maintained that there was little wrong with previous environmental assessment legislation: the observed failures regarding timeliness and scope-creep of assessments and approvals related to how legislation was implemented – not the legislation itself. The same will occur with amended legislation: objectives will not be achieved unless regulators have adequate experience and expertise, and assessment and decisions are based on a sound understanding of risk. (b) Regulators of mining activities on a mine site are more likely to have the requisite knowledge, expertise and experience if they are based in the Mines Branch of the Department of Industry, Tourism and Trade (DITT).
5. Current regulatory challenges P 6, middle of page	Legislative reforms alone are insufficient to improve environmental outcomes and maintain the social licence of the mining industry	(a) In addition to the supports identified, relevant expertise and experience of an adequately-resourced unit of assessment and approvals teams must be addressed. Suggested revision of relevant sentence: Legislative reforms need to be supported by increased guidance, improved systems and processes, adequate expertise of regulatory officers and appropriate resourcing of assessment and approvals teams. (b) The legislation will provide the carriage for the changes but the implementation will be just as important.
6. Proposed environmental regulatory framework for mining P 7, bottom (2nd row of table)	Opportunities for public participation in the mining approval process are limited to projects that are assessed through the environmental impact assessment process. Current wording regarding future opportunities for the public to participate in the environmental licensing process for mining is ambiguous	It is critically important to specify that the licensing referred to here relates to the proposed new system for assessing projects and not to operational licences, e.g. water extraction, wastewater discharge, etc. Inviting public comment on the latter will not streamline processes. Instead, it will prolong processes to approve exploration and development of mines. This will be a disincentive for investment, as it will increase uncertainty. The appropriate place for public participation is in the proposed mining assessment process, not in operational licensing processes or decisions.

Page reference	Issue	Comment
P 8, top (2nd row of table)	On/off tenure environmental impacts regulated by separate legislation, approvals and agencies. **The proposed single agency (DEPWS) approach is unacceptable**	(a) The proposal for regulators to be drawn from, and based in DEPWS would be complicated and counterproductive. Mineral projects involve a number of unique activities and methods and equipment to avoid or mitigate associated impacts, many of which are also unique to mining (e.g. acid mine drainage). (b) Mining jurisdictions around Australia have seen the benefit for both environmental outcomes and investment in generally maintaining environmental regulatory oversight inside the mine lease by relevant mining authorities which in turn work with environmental authorities on the impacts of mining outside the lease. The MCA NT urges government take a similar approach.
6. Proposed environmental regulatory framework for mining **(Cont'd)** P 8, top (3rd row of table)	Limited rights to challenge or review decisions made in the mining approval process. Proposal to Increase rights to challenge decisions made in mining approvals and environmental licensing and registration processes including both judicial and merit review rights, and limited standing for third parties, with merits review conducted by the Northern Territory Civil and Administrative Tribunal.	This is inconsistent with recommendations from the TERC report to reduce 'red tape' and unnecessary administrative burden. The government recognised this in not allowing third party merit reviews in EIA processes under the new Environment Protection Act and Regulations. The NTCAT does not have adequate expertise to adjudicate on challenges to decisions in mining approvals. There should be NO standing for third parties.
6.2 Environmental registration and licensing scheme overview P 9, bottom of page	This scheme will replace the current on/off-tenement management approach, by enabling environmental impacts, whether occurring within or outside of the mine site, to be managed through the one instrument.	MCA NT welcomes the proposed reduction in administering licensing; however, management of environmental impacts on-site should continue to be regulated by the Mines Branch (with its specialist expertise and experience with mining), with DEPWS to regulate management of off-site impacts.
6.4 Environmental licences P 12, middle (4th paragraph)	Current wording includes 'To ensure that licence conditions are operating effectively, continue to deliver environmental outcomes in line with community expectations, …'	As community expectations might not be reasonable or achievable, the government must set limits or defensible criteria
6.7 Public participation and transparency P 14, bottom of page	It is also proposed that the legislation require public reporting of environmental impacts. Reporting provisions would generally apply to all environmental registration and licensing schemes under the EP Act.	Will the government report these from information already being provided by explorers and operators as part of approval processes with no additional reporting burden on the industry? If not, and industry has to do this duplicative reporting, this will add another regulatory burden to the industry, counter to recommendations from the TERC final report. There needs to be an holistic view of reporting requirements and avoidance of duplication.

Page reference	Issue	Comment
6.11 Mine remediation and environmental licence surrender P 16, bottom	Consistent with current requirements under the MMA, the environmental registration and licensing scheme will require mine closure planning to be incorporated into all stages of mining (exploration to surrender) to ensure mining operations, methodologies and processes are guided by the proposed end land use. This, in combination with the financial security, has the objective of minimising the likelihood of a current mine site becoming a legacy mine site.	Not appropriate to require closure planning at the exploration stage! What if exploration results in discovery that not enough mineral wealth would be generated by developing a mine to make a project profitable?
6.12 Reviews of environmental decisions P 17, top (3rd paragraph)	The Territory Government has previously committed to introducing merits review for appropriate environmental decisions. Registration and licensing decisions are appropriate for merits review	For the same reasons the minerals sector and many other stakeholder groups (successfully) opposed third-party merit reviews in the Environment Protection Act and Regulations, third-party merit reviews should not be included in this next stage of environmental regulatory reform. Introducing such reviews would be inconsistent with recommendations from the final TERC report to minimise administrative and regulatory burden on new developments required to repair the Territory economy. If merits reviews are to be introduced for registration and licensing decisions, these should be allowable only for applicants and directly-affected persons and NOT give standing to third parties merely on the basis that a person put a submission in during a consultation process. As in several previous submissions on the same matter, the MCA NT maintains that the only defensible criterion for granting standing solely on the basis of having made a submission is if that submission identified a critically important matter that had been missed in the assessment and decision-making process.
6.12 Reviews of environmental decisions (Cont'd) P 17, middle (dot point 1)	The government proposes to include judicial review of all decisions made under these reforms. Applicants, directly affected persons, and persons that participated in the decision making process (e.g. by commenting on a licensing application) would be able to seek the review. This is consistent with the EP Act.	This regulatory setting might be consistent with the EP Act; however, it is one of the significant flaws in the Act and should be amended. It is an unjustified avenue to allow persons with no vulnerability to direct or material impact to appeal and delay decisions. The definition of a party that has made a 'valid' submission must be limited to 'persons who have provided adequate grounds for concern about potential environmental impacts on the basis that these were missed in the approvals process.,' The MCA NT argued then as it does now that standing should not be granted merely on the basis that a person delivered a submission (not a form letter) by the deadline. This proposal is strongly rejected.
P 17, middle (dot point 2)	The government proposes to allow applicants, directly affected persons, and persons that participated in the decision making process to seek a merits review of an environmental licensing or registration decision.	As above, the MCA NT strongly opposes any form or third-party merit reviews or the granting of standing to persons merely on the basis that they put in a non-form-letter submission on time. This proposal is strongly rejected.
P 17, middle (dot point 3)	The government proposes to allow the directly affected person (e.g. a landholder or licensee) to seek a merits review of any compliance or enforcement decision – such as the issue of an environment protection notice.	The MCA NT supports this proposal as it appropriately allows only persons **directly impacted by decisions** (i.e. proponents or landholders) to seek a review of the decision.

Page reference	Issue	Comment
P 17 middle (last paragraph before 7.	Merit reviews will be conducted by the NTCAT.	As stated previously, NTCAT does not have adequate relevant expertise (in mining or the regulation of mining) to judge whether or not a decision made by a regulator was 'the right decision.'
7. Proposed mining management regulatory reforms P 17, bottom (3rd dot point)	Provide for clear and cost effective avenues for merit review and appeal to the NTCAT for decisions made under the MMA.	For reasons stated above, the MCA NT strongly opposes the introduction of third-party merit reviews into the EP Act. The government listened to and acted on these objections in development of the EP Act and should listen and act on them in this second stage of environmental regulatory reform. The NTCAT does not have adequate expertise to adjudicate on decisions relating to approvals for mining projects
7.1 Improving definitions	There are a number of legislative definitions and processes that are either in need of revision or entirely lacking in the current MMA. Some of the key terms proposed for review include: • Care and maintenance • Legacy mine site • Mine closure • Mining Remediation Fund • Mining security	The MCA NT supports all of the above, which should be developed in consultation with industry.
7.3 Management of mining securities P 19, middle of page	The EP Act allows only judicial review of the amount of an environmental bond that may be payable. Allowing a broad standing merits review process for mining securities may increase the number of challenges to the approval of mining registrations or licences and decrease certainty for the mining industry.	The modest and questionable benefit to the community at large from opening up merits reviews to the general public is vastly outweighed by the delays and uncertainties identified at the start of this paragraph, and the MCA NT is strongly opposed to it
P 19, lower middle (2nd paragraph above consultation questions)	Security provisions 'lock' available financial resources away from proponents. While this protects the Territory Government and Territorians by ensuring that financial resources are available for rehabilitation in the event that the operator is no longer able to comply with their responsibilities, it has been argued that this approach may also decrease investment attractiveness and increase complexity for operators seeking financial investment.	The MCA NT shares this view and continues to advocate for the government to accept insured securities as a form of bond that does not lock away such a substantial amount of capital for additional investment in developing new mines or expanding existing ones. The whole security bond system needs review and modernisation to be fit for purpose while providing adequate contingency funds to complete remediation works upon which mining approvals were granted, should operations cease prior to closure requirements being met.
7.4. Reviews of mining decisions P 20, top	Under the MMA, all decisions are currently subject to judicial review in accordance with the common law. To seek a review, a person must currently demonstrate to the Court that they have a 'special interest' in the decision. As part of the mining reforms greater clarity will be provided on who can seek a judicial review of decisions made under the MMA.	This includes a sound definition of 'special interest,' which must include being 'directly and materially affected by a decision' and not merely interested enough in a matter to have put in a non-form submission by a consultation period deadline.
P 20, middle	As part of the mining reforms the mining board will be replaced with the NTCAT as the point of referral for merit reviews.	This is not appropriate as the NTCAT does not have adequate expertise in mining to assess objections. The Mining Board should be re-activated with appropriate representation.

Page reference	Issue	Comment
7.6 Management of legacy mines P 21, middle	This levy funds the MRF which in turn is used to undertake prioritised remediation works on legacy mine sites.	That was the INTENT of the MRF; however, after 7 years of implementation, less than 6% of the levy and fund has been used to remediate legacy mines and the government has still not produced a plan for strategic investment of the fund for priority remediation projects. The government should commit to re-convening the MRF Working Group to prepare the strategic plan and commence implementation in 2021.
P 21, bottom (2nd dot point)	As part of the mining regulatory reform process for legacy mine sites the following issues are proposed for review: • Improved governance, collaboration and transparency provisions to streamline remediation of legacy mine features.	Agreed, but not just streamlining: DIIT must develop a sound strategy for prioritising legacy mine sites and features and then develop work plans to address them, capitalising on opportunities to leverage industry assistance and maximising opportunities for local and regional Aboriginal and non-Aboriginal communities to participate in remediating legacy mines.
P 21, bottom 4th dot point)	Consideration of retaining the interest from the MRF in the fund.	MCA NT strongly supports this. At the February 2019 MRF workshop, the D/CEO of DITT (then DPIR) indicated that interest had been and would continue to go into general revenue. He offered, as an alternative, that 100 per cent of the levy contributions and NOT just the minimum of 33 per cent stipulated in the *Mining Management Act* would go into the MRF. This needs to be formalised in writing or it will be vulnerable to the same misdirection of funds that occurred when the MRF went into General Revenue, completely contrary to verbal assurances when the MRF was created. **MCA NT recommends that both of these be incorporated in proposed amendment of the EP Act: (1) interest from the MRF to be put back into the MRF and (2) 100 per cent of levy contributions to be paid into the Fund.**
8.0 Transitional arrangements P 24 top	It is foreseeable that when these proposed new arrangements take effect, processes commenced under the earlier legislation may be well-advanced but not yet finalised. In these instances, mining operators will have, in good faith, commissioned detailed design work consistent with the requirements at that time. For example, the operator may still be developing an MMP or have submitted an MMP but not yet have received approval of that plan or the mining authorisation. In these circumstances, it is proposed to allow the existing process to be completed under the MMA, subject to: (a) the authorisation and MMP approval process being completed within 12 months of the changes to the EP Act commencing, and (b) a requirement that the operator seek an environmental registration or licence within the period specified in the EP Act. This period should align with timeframes required for existing activities to transfer into the environmental registration and licensing scheme.	If the process has started, it should be allowed to continue under the old system (under which the process was commenced). 12 months is probably too short a time limit.

Page reference	Issue	Comment
P 24 bottom of page	DITT and DEPWS have identified three options to support transfers of existing authorisations: 1. Option 1: Require the proposed transferee to apply for an environmental registration or licence at the time of seeking the transfer. This option may reduce certainty for the new operator about their environmental obligations. 2. Option 2: Require the proposed transferor to obtain an environmental registration or licence prior to the transfer, and to transfer that registration or licence rather than the existing mining authorisation and approved MMP. 3. Option 3: Allow the transfer of the existing authorisation and approved MMP, however, require these to be replaced by an environmental registration or licence within a defined period.	All three should be available for operators to negotiate their preferred option with the regulator, based on their particular circumstances and the nature of their operations; however, if only one will apply, Option 3 would probably suit more operators than the other two.
9.1 Residual risks payments P 25, bottom of page	Development of a residual risk framework is currently being explored, with the view to introducing a draft framework during a later stage of the reform program for consultation with industry.	Conceptually, this has merit, but it comes down to the ability of the relevant regulatory agency to calculate a sensible and realistic number, based on a sound understanding of actual risk and not 'perceived' risk. The MCA NT is uncertain of the ability of regulators to do this well, e.g. given the time it takes to assess and approve mining management plans (delays because of an overestimation of risk) and concerns regarding how realistic and current the security bond calculator on the government's website is.
9.2 Chain of responsibility legislation P 26, middle of page	A 'related person' under the legislation includes parent companies and those who have a relevant connection to the company based on their capacity to significantly benefit financially from the company's activities or their ability to influence the company's compliance with its environmental obligations. In practice, orders are issued to persons that are considered to be culpable because of their participation in the company's avoidance, or attempted avoidance, of its environmental obligations.	Since its introduction, the chain of responsibility legislation been used relatively sparingly and, when used, has predominantly been directed to company CEOs. There have been discussions of unintended consequences of the broad definition of 'related person' capturing entities reasonably removed from the actual decision-making process, such as third party financiers; however, the practical effect of the broad scope has been somewhat limited.
Table 1. Examples of possible risk criteria and standard requirements P 28, top and bottom of page	**Mining – Risk criteria – Activity-based** • Mining does not leave a pit-lake or final void as a post-mining land form • Mining does not create a tailings or residue storage facility, waste dump, overburden stockpile that contains: ○ radioactive material ○ material capable of generating acid and metalliferous drainage, including neutral drainage and saline drainage	Although the MCA NT would endorse many or most of the entries in this table, several are unacceptable (e.g. 'Mining does not leave a pit-lake or final void as a post-mining land form). These risk criteria and standard requirements are complex and merit a further, separate review and consultation focused only on proposed risk criteria and standard requirements.

ATTACHMENT B

MCA NT responses to questions in the consultation Draft *Regulation of mining activities: Environmental regulatory reform (December 2020; DEPWS)*

Page references	Question in Consultation Draft	MCA NT Response
P 9, 6.1 General (mining) environmental obligations or duties	**Q1.** Is the approach of imposing general (mining) environmental obligations or duties to provide a 'safety net' and support for the licensing and registration scheme supported?	Yes. The proposed list of 'general (mining) environmental obligations' (on pages 8-9) seem reasonable.
	Q2. What alternatives should be considered?	N/A
	Q3. What other general (mining) environmental obligations should be included?	None
P 11, 6.2 Environmental registration and licensing scheme overview	**Q4.** Rather than relying on a non-exhaustive list of substantial disturbance activities such as that contained in s.35 of the MMA, should the new framework legislation identify an exhaustive list of non-disturbing activities? This could include, for example, airborne surveys and terrestrial seismic surveys undertaken using existing tracks.	Only if it would be a smaller list. Whichever way is decided, there will always be issues with activities not listed, which then comes down to assessment of risk and management. A specific list should be agreed through consultation (MCA NT, AMEC and others)
	Q5. Are there any mining related activities that currently require authorisation and a mining management plan that should not be subject to the new framework?	None that MCA NT is aware of.
	Q6. Are there mining related activities that are not currently required to be authorised that should be under these reforms?	No.
P 13, 6.5 **Registration and licence condition reviews**	**Q7.** Under what other circumstances should the CEO be able to amend the conditions of a licence?	The list above seems like a reasonably complete list; however, this must involve consultation with the proponent.
P 14, 6.6 Independent specialist reviews and sign off	**Q8.** What protections could be included in the legislation to ensure peer review powers are only used when required to ensure that the licensing process provides the necessary environmental protections and meets the objectives of the EP Act?	Develop, in consultation with industry, appropriate criteria to determine if and when expert information provided in EIA documentation is deemed to require further analysis and verification by a third party. This proposal is fraught because if a proponent has engaged, for example, a respected and professional engineering firm to design, supervise construction and certify compliance, there should be no need for a second engineering firm to verify the soundness of designs and advice of the expert engaged by the proponent. This should be done on a case-by-case basis and be dependent on the specific information provided by the applicant and the quality of information. It should be

Page references	Question in Consultation Draft	MCA NT Response
		up to the department to justify why a peer review is required. It might be appropriate for the Mining Board to review the basis on which the department has required a second opinion from a third-party reviewer.
P 14, 6.6 Independent specialist reviews and sign off (Cont'd)	**Q9.** What information or assistance could you provide to enable administrative guidance that supports a "prepare once, use many" approach to peer review documents to be developed?	(a) This might be more efficiently approached in a workshop setting, with appropriate representatives from industry and regulators. This is the same issue as above. There must be very tight controls on what needs review by a 3rd party. Regulators need to understand the commercial implications for a proponent of requiring additional 'experts, and proponents would be justified in contesting the need for these unless regulators could adequately demonstrate that existing advice was flawed or suspect. (b) The 'prepare once, use many' is good in theory but it needs to be clearly reviewed to ensure the particular information is applicable for use in the proposed review, i.e. 'apples will be compared to apples.' There may also be issues with the restrictions placed on information by consultants preventing multiple use of information. **(c)** Regarding 'use many,' advice and information from peer reviews might at some state be outdated and no longer validly applied.
P 16, 6.10 **Environmental Compliance and enforcement**	**Q10.** Are there any compliance and enforcement tools not currently available in the EP Act or the MMA that should be considered for inclusion as part of these reforms?	Where a registered operator is not complying with standard conditions of their registration, it may be appropriate for the DEPWS CEO to use the proposed 'performance improvement agreement' process (outlined in Section 6.10) to improve environmental performance by the operator.
P 18, 7.2 Authorisation and Mining Management Plan reform	**Q11.** What improvements to the mining authorisation process do you consider would improve efficiency and effectiveness?	(a) Either greatly improving the targeting of key matters in MMPs or replacing them with the proposed Mining Plan or Mining Program, if these will be targeted at those activities with greatest potential for significant and unacceptable adverse environmental impacts. The focus needs to be on key risks which is not how the current system is operating. (b) Timelines should be set for review and approval. (c) Ensure that regulators have appropriate and adequate knowledge and expertise to process mining authorisations efficiently.
P 19, 7.3 Management of mining securities	**Q12.** How can the mining securities framework be improved?	(a) Maintain DITT as the authority to administer mining securities. (b) Ensure the securities (bond) calculator is regularly updated to reflect current costs. Costs developed by proponents should be accepted, as they have more reliable and current data on which to base calculations. (c) As the consultation draft proposes that DEPWS calculate the security to cover 'the likely level of environmental disturbance' but DITT will determine 'any additional infrastructure security and security to meet close-out requirements' and DITT will collect and manage the security, DITT and

Page references	Question in Consultation Draft	MCA NT Response
		DEPWS must work efficiently and effectively together to minimise undue delays for operators in their joint administration of securities (d) Regulators determining securities must have adequate expertise to do this. (e) Provisions in the MMA that allow a mining operator **or an affected party** (see definition below) to seek a merits review in relation to issuing a mining authorisation, conditions placed on an authorisation and claims on security should continue**; however, an affected party must NOT include a party whose only relevance to the mineral project relates to their having put in a non-form-letter submission by a deadline or other claim that lacks materiality.** (f) The government should accept insured securities as a form of bond that does not lock away capital for additional investment in developing new mines or expanding existing ones. (g) To provide certainty for operators, clear linkage to lease relinquishment conditions and the timely return of the bond/surety when company obligations have been fulfilled. (h) Another argument for DITT to maintain authority and responsibility over the setting of rehabilitation bonds is that there is no expertise to do this in DEPWS. The entire system of rehabilitation security bonds should be reviewed and involve industry consultation, e.g. through targeted workshops.
P 19, 7.3 Management of mining securities (Cont'd)	**Q13.** How can the management of mining securities be improved to provide greater incentives and reward for progressive rehabilitation?	By timely return of those portions of the security bond for successful completion of rehabilitation areas in the disturbance footprint Remove or discount the levy further than the reduction associated with reducing the securities.
	Q14. What improvements could be made to the calculation of mining securities to better address potential environmental risks and impacts?	(a) Ensure bond calculator is regularly reviewed and calibrated to reflect current costs of rehabilitation. (b) More readily accept proponent unit cost assumptions (c) Offer discounts to operators who can demonstrate successful rehabilitation of similar disturbed areas for other projects, and companies that are part of major (global) organisations with substantial assets to assist with costs of rehabilitation if required.
	Q15. What other matters would you like to see considered as part of a review of mining security assessment?	Whether in DITT or DEPWS, officers that administer the setting and management of securities must have appropriate mining expertise and adequate resources, and application of criteria must be consistent and transparent to build and maintain industry and community confidence in the security bond framework.

Page references	Question in Consultation Draft	MCA NT Response
P 20, 7.4 Reviews of mining decisions	**Q16.** Should mining operators have standing to seek a merits review of the proposed environmental and/or infrastructure security? Why**?**	(a) Yes. It is possible that the securities have not been based on the best available information or do not reflect other criteria that should be incorporated in calculations, e.g. prior successful record of rehabilitation, the company being part of a larger global organisation with substantial resources to supplement securities lodged for a particular mine. (b) The department may be misinformed or incorrect in interpretation of required securities, e.g. monitoring requirements or post-closure monitoring period
P 21, 7.5 Management of care and maintenance periods	**Q 17.** How should 'care and maintenance' be defined?	Care and maintenance is a period during which operations on a mine site have ceased but might recommence at a later date, and the site continues to be managed to ensure it remains in a safe and stable condition.)
	Q18. What other mechanisms could be adopted to improve the management of environmental impacts during care and maintenance periods?	Operators must continue to meet the obligations and requirements of their approval conditions.
	Q19. Should the legislation impose a time limitation on how long a site can remain in 'care and maintenance'? If so, what period may be appropriate?	(a) Rather than arbitrarily setting a time limit, a more sound approach would be to develop (in consultation with industry) criteria that define what commercial and other conditions must be met for a company to legitimately continue to be in care and maintenance. (b) Should be a case-by-case basis whilst reflective of the level of risk associated with the operation
	Q20. What, if any, standard obligations for environmental management during care and maintenance periods should be incorporated into the EP Act?	All environmental controls to remain active; discharge limits unchanged; and financial assurances to be held and maintained, or reduced if progressive rehabilitation works continue during care and maintenance. The company must provide an adequate care and maintenance plan, documenting work to be done to keep the site in compliance with applicable regulations.
P 21, 7.6 Management of legacy mines	**Q 21.** In addition to the proposals contained in this paper, what other mechanisms could the Territory introduce to minimise the potential for legacy sites to be created in the future?	As described in the in-text comments, the MCA supports the proposals as written or modified.
	Q 22. In what ways can industry be encouraged and supported to play a larger role in undertaking remediation works on legacy sites?	By re-activating the working group from the February 2019 MRF workshop and following through on development of a strategic plan for investments from the MRF in priority remediation works and establishment of a largely industry-based advisory board or expert panel.
P 22, 7.7 Land access arrangements	**Q 23.** In what ways could the management and administration of land access arrangements be improved for both mineral title holders and affected landholders or leaseholders?	Through collaboration of MCA NT, AMEC, the Cattlemen's Association of the NT and the Mining and Pastoral Divisions of DITT to produce a Land Access Guide for land-managers, focusing on their rights and obligations, to complement the *Code of Conduct for Mineral Explorers* that was released in March 2020

Page references	Question in Consultation Draft	MCA NT Response
P 24, 8.0 Transitional arrangements	**Q 24.** How would the proposed transitional arrangements affect your mining activity?	(a) Responses will vary depending on each mine- and life-of-mine stage of operation. For this reason, the MCA NT recommends that the regulator negotiate appropriate transitional arrangements with each mine that will be affected by proposed regulatory changes. (b) Need to have more detail on what the required transition requirements will be (c) There will be an increased requirement of time and resources to develop the applicable documentation to apply for the new regulatory requirements.
	Q 25. What improvements could be made to the proposed transitional arrangements to facilitate the transfer of projects into the new system in a timely, staged and efficient manner?	(a) Instead of including just one option in the regulatory framework (described on page 23 of the consultation draft), legislation should include all three and allow a company to negotiate with the government which of these is most appropriate, given the particular nature and circumstances relevant to that company's operations. (b) Timelines should be made explicit but include flexibility to accommodate the time it takes to resolve difficulties raised by either the regulator or proponent. Operations, exploration, and other activities are complex and 'fluid,' and activities should be able to continue uninterrupted while matters are being resolved. This will be particularly important in the early period of implementing new regulatory settings, when 'teething problems' are likely to arise.
	Q 26. For each type of mining activity – exploration, extraction and mining operations – what would be an appropriate timeframe in which to require the activity to obtain an environmental registration or licence?	(a) The government should evaluate timeframes that are used by other jurisdictions and include these in a draft consultation document to be considered by industry, to assist in identification of appropriate timeframes for exploration, extraction and mining operations. (b) The absolute minimum should be 12 months with an ability to seek extensions, particularly for those companies having difficulties in achieving 100 per cent compliance with new regulations. (c) Four years to align with the current MMA requirements for MMP's
	Q 27. Are the proposed arrangements for non-finalised processes appropriate? If not, what alternative processes should be considered?	(a) Proposed arrangements seem reasonable; however, there should be a safety net or flexibility to manage situations when companies are having difficulty meeting all criteria for 100 per cent compliance. (b) The MMP approval in 12 months is highly dependent on the action of the department in completing processes within that timeframe and may be out of the hands of the proponent
	Q 28. What arrangements would you propose for operators that wish to transfer the mining activity?	Proposed arrangements seem reasonable. All three options identified on page 23 should be available for operators to negotiate their preferred option, based on their particular circumstances.

Page references	Question in Consultation Draft	MCA NT Response
P 26, 9.2 **Chain of responsibility legislation**	**Q 29.** What elements would you like to see included in a residual risk framework?	(a) The government should identify and evaluate the usefulness of elements that are used by other jurisdictions and include these in a draft consultation document to be considered by industry, to assist in identification of a suitable suite of residual risks (b) There is also the risk that the payments will not be used for their primary purpose such as the levy. What happens to the funds once the agreed number of years have surpassed? (c) Can the residual risk be a bank guarantee so that it does not tie up capital? If the money is not used, does it get returned to the operator? (d) Agreed it needs to be properly investigated with *bona fide* consultation.
	Q 30. Are there specific matters that should be considered as part of developing a residual risk framework applicable to mining activities?	(a) As above, the government should consider what is done elsewhere and prepare a consultation draft for review by the minerals sector and other industries that leave structures in situ after activities have ceased. (b) In developing a residual risk framework, the government should ensure that inclusions are justifiable and that requirements are not so onerous as to comprise a disincentive for potential investors in NT-based projects.
	Q 31. What benefits might there be to applying chain of responsibility laws to mining and other environmentally impacting activities?	As stated in the consultation draft, chain of responsibility legislation is used to ensure that post-mining liabilities are addressed by the mining company, parent company, joint venture partner or other body and not the government or community.