

# Regulation of mining activities

Environmental regulatory reform

Acronym	Explanation
DENR	The Department of Environment and Natural Resources
DEPWS	The Department of Environment, Parks and Water Security
DITT	The Department of Industry, Tourism and Trade
DPIR	The Department of Primary Industry and Resources
EMP	Environmental Management Plan
EP Act	Environment Protection Act 2019
ERLS	Environmental registration and licensing scheme
MMA	Mining Management Act 2001
MMP	Mining Management Plan
MRF	Mining Remediation Fund
MTA	Mineral Titles Act 2010
NTCAT	Northern Territory Civil and Administrative Tribunal

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# 1. Introduction

The NT Government is committed to supporting and encouraging the growth of a safe, competitive, innovative and sustainable resources industry that builds a stronger economy for all Territorians. The resources industry will be supported to create local jobs for Territorians, support local Territory businesses and protect our unique natural environment.

The NT Government is also committed to modernising the Territory's environmental laws. It wants to make sure that the NT has the most up-to-date environmental law overseeing environmental protection and management, recognising how important the environment is for everybody.

In September 2019 the *Environment Protection Act 2019* (EP Act) was passed, introducing improvements to the environmental impact assessment and approval process for the Northern Territory (NT). Work is now focused on putting in place legislation to ensure the effective environmental oversight of industry and development in the NT, commencing with the mining industry. This will require concurrent amendments to both the EP Act and the *Mining Management Act 2001* (MMA), and the migration of all environmental management provisions to the new EP Act.

This paper describes the proposed reforms to environmental regulation of mining activities in further detail. It has been prepared to generate informed conversation to support the development of an effective regulatory framework for mining in the NT that meets industry requirements as well as community expectations of a contemporary and robust environmental regulatory system.

The paper describes the current regulatory challenges and the reasons for the reforms. It presents the proposed approach to transform the current system into a contemporary, transparent regulatory scheme to manage environmental impacts. The paper also outlines some of the key improvements proposed for mining regulation. It sets out the complementary roles of the Departments of Environment, Parks and Water Security (DEPWS) and Industry, Tourism and Trade (DITT) in the ongoing regulation of the mining sector<sup>1</sup>.

This paper invites readers to respond to specific questions and to provide their input into what is being proposed.

Future environmental reforms will address improvements to the management of waste and pollution to ensure proportionate, risk based, environmental registration and licensing of other industries (including native vegetation clearing) that impact the environment and improved identification, remediation and management of land contamination. Separate consultation papers identifying proposed reforms in those areas will be prepared.

## 2. Principles and objectives of reform

The NT Government's environmental regulatory reform program is underpinned by three objectives:

- improved investor certainty
- better environmental outcomes
- building community confidence.

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<sup>1</sup> DEPWS was formerly known as the Department of Environment and Natural Resources (DENR), while DITT was formerly known as the Department of Primary Industry and Resources (DPIR).

These objectives are supported by a number of strategic and operational principles that are designed to ensure our regulatory regime for the mining industry is an effective risk based, transparent, robust and fair regime that provides certainty to business and industry to encourage and promote investment in prospective and existing projects.

In addition to these objectives the purpose and outcomes being sought from the reforms to the environmental regulation of mining include:

- Clear separation of responsibilities for environmental regulatory functions on mine sites.
- Ensuring appropriate environmental oversight of mining activities to ensure operational impacts of activities are minimised and environmental incidents are negligible.
- Developing a system that supports front-end planning to ensure minimal and managed environmental impacts both during and post mining activities.
- Implementing a polluter pays approach to environmental protection.
- Compliance and enforcement of environmental conditions and obligations on mine sites, commensurate with risk.
- Any mining legacies are avoided, or if they do arise are effectively managed.

The purpose and outcomes being sought from the reforms to mining management include:

- Improved definitions and regulatory tools for the ongoing management of mining securities, the mining levy, care and maintenance periods, the Mining Remediation Fund (MRF) and legacy mines.
- A streamlined approval process to authorise mining activities in parallel with environmental approvals.
- A reduced regulatory burden on industry by removing the need for mining management plans (MMP's) in their current form.
- A reduced regulatory burden through implementation of a risk based whole of mine life approach to authorisations.
- Clear and cost effective avenues for merit review and appeal to the Northern Territory Civil and Administrative Tribunal (NTCAT) for decisions made under the MMA.

Successful reforms also relies on both improvements to legislation and the way in which legislation is administered. For reforms to be successful, a change in process and practice within Government departments will also be required.

As part of legislative reforms, DEPWS and DITT will work collaboratively to identify and implement provisions – both administrative and legislative – that encourage collaboration and consultation between the departments while streamlining requirements for operators.

### 3. Mining in the Northern Territory

The Territory's mining and manufacturing industries are the second largest contributor to the economy, accounting for 22.7% of gross state product – of which approximately 19% is attributable directly to the mining industry<sup>2</sup>. The industry contributes to the economy both directly through employment and royalty payments and indirectly through the supporting service industries and community infrastructure.

As of March 2020<sup>3</sup>, in the Territory, there were:

- 159 authorised exploration projects
- 125 authorised extractive mining projects
- 64 authorised mining projects.

The continued success of the mining industry is critical to the Territory's economic growth. However, any loss of social licence (i.e. community support) for mining has the potential to compromise future investment in the development of the Territory's resources. It is therefore vital that the regulation of the NT mining industry is contemporary, robust and transparent, remaining competitive and comparable at a national and a global scale.

There are many unique elements to mining that makes the mining industry different to other development activities, warranting an industry-specific approach. These include:

- A dependency on a resource that is fixed in its location which dictates site design and limits opportunities to avoid environmental impacts through alternate siting.
- Being underpinned by a mining tenure system that is additional to the freehold and leasehold tenure systems underpinning most other economic activities.
- A fixed or finite operational life involving a temporary use of land.
- A dependency on commodity prices meaning operations may temporarily pause multiple times within the life of a mine.
- The generation of unique wastes (tailings and waste rock dumps) that mostly remain on the surface after mining activity has ceased which can create long term environmental risks beyond the mine life.
- The creation of unique landforms that may have limited future land use options after mine closure.

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<sup>2</sup> <https://nteconomy.nt.gov.au/industry-analysis/mining-and-manufacturing>

<sup>3</sup> Department of Industry, Tourism and Trade. Authorised mine, extractive and mineral exploration sites. March 2020. Available: <https://DITT.nt.gov.au/mining-and-energy/mines-and-energy-publications-information-and-statistics/authorised-mining-sites>

## 4. The existing regulatory framework for mining

The Territory's regulatory framework for managing environmental impacts from mining activities is sometimes referred to as an "on/off-tenement" approach as environmental impacts contained within mine sites are managed under the MMA, whilst impacts occurring outside of the mine site are regulated under other laws.

The existing mining regulatory framework primarily comprises:

1. The *Mineral Titles Act 2010* (MTA) – which establishes a system for granting and managing mineral titles.
2. The *Mining Management Act 2001* (MMA) – which establishes regulatory requirements aimed at managing environmental impacts and mining operations. This Act establishes requirements for the grant of mining authorisations and approval of mining management plans as the primary regulatory management tools.
3. The *Mineral Royalty Act 1982* – which establishes requirements for the payment of mining royalties to the Territory Government.
4. The *Environment Protection Act 2019* (EP Act) – which assesses the potential significant impacts of a mining proposal and conditions an environmental approval to achieve environmental objectives<sup>4</sup>. The assessment and approval processes established under this Act apply to those actions that may have a significant impact on the environment, such as large mining operations and some extractive activities in environmentally sensitive areas. In general terms, these processes are unlikely to apply to exploration activities and the majority of smaller extractive activities.

Outside of mine sites, environmental regulation of mining activities can occur through a range of other legislation, including:

1. The *Water Act 1992* (Water Act) – which establishes licensing requirements for the extraction and use of the Territory's water resources, including for mining activities; and licensing requirements for the discharge of wastes to water.
2. The *Waste Management and Pollution Control Act 1998* (WMPCA) – which establishes general obligations for the management of wastes and pollution, including those that may leave a mine site.

The MMA provides for the authorisation of mining activities, the management of mine sites, the protection of the environment on mine sites, requirements for securities, payment of the levy and mine closure. Currently, under the MMA, the operator of the mine site must be authorised to carry out mining activities. If the proposed mining activity is for exploration, authorisation is required if the exploration involves 'substantial disturbance' of the site. Substantial disturbance includes a broad range of activities, from land clearing, to earthworks and on ground seismic activities.

In order to obtain authorisation, the mining operator must submit, and obtain approval of a mining management plan (MMP). In approving an MMP, the Minister for Mining and Industry (Mining Minister) must be satisfied that the plan identifies a management system that is appropriate for the activities described in the plan and will, as far as practicable, operate effectively to protect the environment and

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<sup>4</sup> Under the now repealed Environmental Assessment Act 1982, the recommendations flowing from any environmental assessment would inform conditions on a Mining Authorisation.



certain water rights. The Mining Minister must also be satisfied that the activities described in the plan will be carried out in accordance with good industry practice.

MMPs contain a mixture of confidential and non-confidential information about the mining program, particularly in relation to proposed expenditure and works in future years, the designs for construction on site, the techniques to be employed in extracting the resources and the various management systems in place to support operations. Plans include details of environmental risks, proposed environmental performance reporting and mine closure planning. MMP's are made publicly available once approved.

MMPs must also be amended if there are changes to the matters addressed under the plan. As conditions of the authorisation, mining operators are required to submit a number of compliance and performance reports and data, including surface and ground water quality monitoring data and operational performance reports. The MMA includes statutory requirements to report an environmental incident or serious environmental incident to the regulator.

The MMA contains a range of compliance and enforcement tools that can be used to ensure mining operators meet their environmental obligations and remediate environmental impacts. In addition, mining operators are required to pay a mining security<sup>5</sup> prior to commencing mining activities. The security is calculated on the cost of rehabilitating the proposed level of disturbance at the mine site.

Mining operators are also required to pay an annual non-refundable levy equivalent to 1% of the total amount of the security held on 1 July each year. The levy funds are held in the Mining Remediation Fund (MRF) to address the impacts of legacy mines.

## 5. Current regulatory challenges

The 2015 Hawke "Review of the Northern Territory Environmental Assessment and Approval Process", raised various concerns about the current environmental regulatory framework for mining activities and noted that the MMA, "inherently presumes that the mining activity will in all cases trump the potential environmental impact"<sup>6</sup>. The review went on to note that while this may not be true in practice, it creates perceptions that are inconsistent with attempts to build community confidence that potential environmental impacts can be actively managed to ensure they do not arise.

The review also found that overlapping jurisdiction for environmental regulators resulting from the on/off site regulatory regime "has the potential to create significant inefficiencies and uncertainties"<sup>7</sup>, and that requirements to create multiple, duplicate, documents drawing on the same information – which result from a lack of transparency in mining management plans – was contributing significant transaction costs to the approval process, as well as increasing uncertainty about environmental management expectations and mining operator responsibilities.

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<sup>5</sup> A security is analogous to an environmental bond in other jurisdictions.

<sup>6</sup> Hawke, A. 2015. 'Review of the Northern Territory Environmental Assessment and Approval Process', pp.34-35 available: <https://DEPWS.nt.gov.au/environment-information/environmental-policy-reform/environmental-regulatory-reform-archive-news/reports/hawke-ii-review>

<sup>7</sup> Hawke, A. 2015. 'Review of the Northern Territory Environmental Assessment and Approval Process', pp.37 available: <https://DEPWS.nt.gov.au/environment-information/environmental-policy-reform/environmental-regulatory-reform-archive-news/reports/hawke-ii-review>

In summary the key concerns that regulatory reforms for the mining industry will seek to address include:

- Perceptions of sectoral capture and conflicts of interest in decision making processes.
- Uncertainty on regulatory roles and responsibilities and duplication of effort for industry and the regulators.
- A largely non risk based approach to regulating mining activities.
- A lack of public transparency in approvals process.
- The size, complexity and cost of developing MMPs in their current form.
- No defined timelines for reviewing and approving MMPs.
- Historical failures resulting in legacy mines.
- Incidents of contaminated waterways and damage to sacred sites.
- Downstream impacts on flora and fauna from mining activity contamination.

Legislative reforms alone are insufficient to improve environmental outcomes and maintain the social licence of the mining industry. Legislative reforms need to be supported by increased guidance, improved systems and processes and appropriate resourcing. Conversely, while increased guidance and resourcing may resolve some issues, such as assessment and approval timeframes, there are other issues (such as the separation of responsibilities) that cannot be resolved without also changing the underlying legislation.

## 6. Proposed environmental regulatory framework for mining

Reforms to the regulatory framework for mining activities are intended to result in the clear separation of regulatory responsibilities for environmental management from mining operation regulation. This will address concerns about the perception of 'sectoral capture' and is largely consistent with the environmental regulation of the onshore petroleum industry following implementation of recommendations from the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory<sup>8</sup>.

As part of this regulatory separation, it is proposed to:

1. Amend the EP Act to introduce an environmental registration and licensing scheme (the ERLS) to manage all environmental impacts of mining activities and supported by general obligations and duties for environmental management.
2. Amend the MMA, to provide for a simplified mining authorisation and mining plan which details infrastructure design, infrastructure management systems, staged extraction, decommissioning and mine closure.

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<sup>8</sup> The OECD also recognises the need for regulators to be independent from those that it regulates. This by definition precludes regulators taking a role in industry development and promotion; see OECD.2014. 'The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy'. OECD Publishing; available: <https://www.oecd-ilibrary.org>

In more general terms, under the proposed reforms:

- DEPWS will be responsible for the assessment and grant of environmental approvals, licences and registrations which will condition the required environmental outcomes to conduct and remediate the environmental impacts of mining activities. DEPWS will be responsible for monitoring, compliance and enforcement of those licences and registrations and environmental outcomes (including remediation, rehabilitation and closure objectives).
- DITT will be responsible for the assessment and authorisation of mining activities, including closure plans. DITT will also manage the financial administration of the mining security, the administration of the MRF and legacy mine management. DITT will be responsible for the monitoring, compliance and enforcement of the mining authorisation.

Unlike the current mining authorisation, the proposed ERLS will not rely on a traditional mining management plan (MMP) as the key approval and regulatory tool. It would however likely be a condition of an environmental registration or licence that the mining operator prepare and maintain an environmental management plan (EMP). This plan would be made publicly available and would provide demonstration of the intended approach of the operator to deliver the required environmental outcomes.

The proposed ERLS will be supported by general (mining) environmental obligations and duties designed to minimise impacts on the environment that all mining operators must comply with. These general obligations will identify the standard expectations for operators when conducting activities.

The proposed ERLS will operate in conjunction with, and support, any environmental approval that may be required for a mining activity following completion of an environmental impact assessment process. (This is most likely to apply to mining operations as opposed to exploration or extractive activities.)

The key ways in which the proposed reforms differ from current arrangements are:

Current Arrangements	Proposed Arrangements
"One stop shop" for environmental and resource regulation delivered through DITT.	Separation of responsibilities for environmental regulation from responsibilities for resource regulation. Processes can be run in parallel.
Opportunities for public participation in the mining approval process are limited to projects that are assessed through the environmental impact assessment process.	Increased opportunities for public participation in the environmental licensing process for mining activities, through public comment periods for licence applications that have not been subject to environmental impact assessment processes.
Mining management plans provide all required information for approval including history, biophysical environment, site layout and infrastructure design, management systems and structures, previous and proposed mining activities, environmental risks and proposed management responses, objectives and targets for environmental performance and reporting, environmental remediation and closure activities; and proposed stakeholder engagement activities.	Separation of environmental management requirements and mining operations details. New environmental licensing and registration scheme to regulate environmental impacts. Environmental performance standards specified by DEPWS in conditions of licence or registration. Current Mining Management Plans replaced with a more streamlined Mining Program focussed on infrastructure design, infrastructure management systems, staged extraction, decommissioning and mine closure.

Current Arrangements	Proposed Arrangements
No legislative transparency requirements in MMA regarding applications for authorisation or compliance with environmental obligations.	Increased transparency of environmental obligations under the EP Act, through publishing of environmental registrations and licenses, and publishing of reports on environmental outcomes submitted in accordance with licence and registration conditions.
On/off tenure environmental impacts regulated by separate legislation, approvals and agencies.	A single agency regulating the new environmental licensing and registration scheme on tenure and environmental impacts off tenure.
Limited rights to challenge or review decisions made in the mining approval process.	Increased rights to challenge decisions made in mining approvals and environmental licencing 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.
Compliance and enforcement activities for breaches of mining management plans, mining authorisations and environmental offences undertaken by DITT.	DEPWS to conduct compliance and enforcement activities for alleged breaches of environmental obligations. DITT to conduct compliance and enforcement activities for any alleged breaches of the MMA.

## 6.1. General (mining) environmental obligations or duties

The general (mining) environmental obligations and duties are designed to minimise impacts on the environment and provide a 'safety net' that all mining operators must comply with. These general obligations will be specified within the EP Act and identify the standard expectations for operators when conducting activities, regardless of whether that activity requires registration or licensing, and will be enforceable.

The proposed general (mining) environmental obligations are to:

- minimise environmental impacts, including the generation of wastes and pollution, to those necessary for the establishment, operation and closure of the site
- minimise requirements for clearing of native vegetation
- prevent land degradation associated with the clearing of native vegetation
- undertake progressive rehabilitation activities to the extent practicable and appropriate
- design structures in a manner that is commensurate with the surrounding environment to the extent practicable
- design, maintain and operate structures (e.g. pits, tailings storage facilities) in a manner that minimises environmental impacts (including amenity impacts)
- maintain and operate equipment installed at the mine site to a standard conducive to its proper and efficient use to minimise environmental impacts

- reuse and recycle wastes that may be produced or generated as part of conducting the mining activity or an ancillary mining activity to the extent practicable.

In complying with the general (mining) environmental obligation to minimise requirements for clearing native vegetation, further consideration needs to be given as to what reasonable and practicable measures could be identified to give further guidance in this area. For example, it is unlikely to be appropriate to require mining operators to meet the criteria to avoid clearing sensitive or significant vegetation under the Territory's 'Land Clearing Guidelines' (2019), which are primarily designed to manage broad scale clearing for pasture and horticultural developments. It may however be possible to impose requirements such as minimise clearing sensitive or significant vegetation types.

#### CONSULTATION QUESTIONS: PROPOSED FRAMEWORK – GENERAL ENVIRONMENTAL DUTIES

1. 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? If not, why?
2. What alternatives should be considered?
3. What other general (mining) environmental obligations should be included?

## 6.2. Environmental registration and licensing scheme overview

Currently a mining operator is required to seek a mining authorisation and approval of an MMP when the activity will involve 'substantial disturbance' of the mine site. The MMA (section 35(3)) provides a non-exhaustive list of what constitutes 'substantial disturbance'. In relation to fossicking activities, the MMA is not applicable and these activities are not intended to be part of this reform process.

In general terms it is proposed that activities that would currently require authorisation and an approved MMP under the MMA would be subject to the proposed environmental registration and licensing scheme (ERLS). This means, exploration activities, extractive activities and mining operations may all require an environmental registration or licence to operate. Activities that do not currently require authorisation, such as exploration activities not involving substantial disturbance would not require a registration or licence although they would still be subject to the general (mining) environmental duties.

The proposed reforms to the environmental management of mining activities will introduce a tiered environmental registration and licensing scheme based upon the potential risk of the activity on the environment.

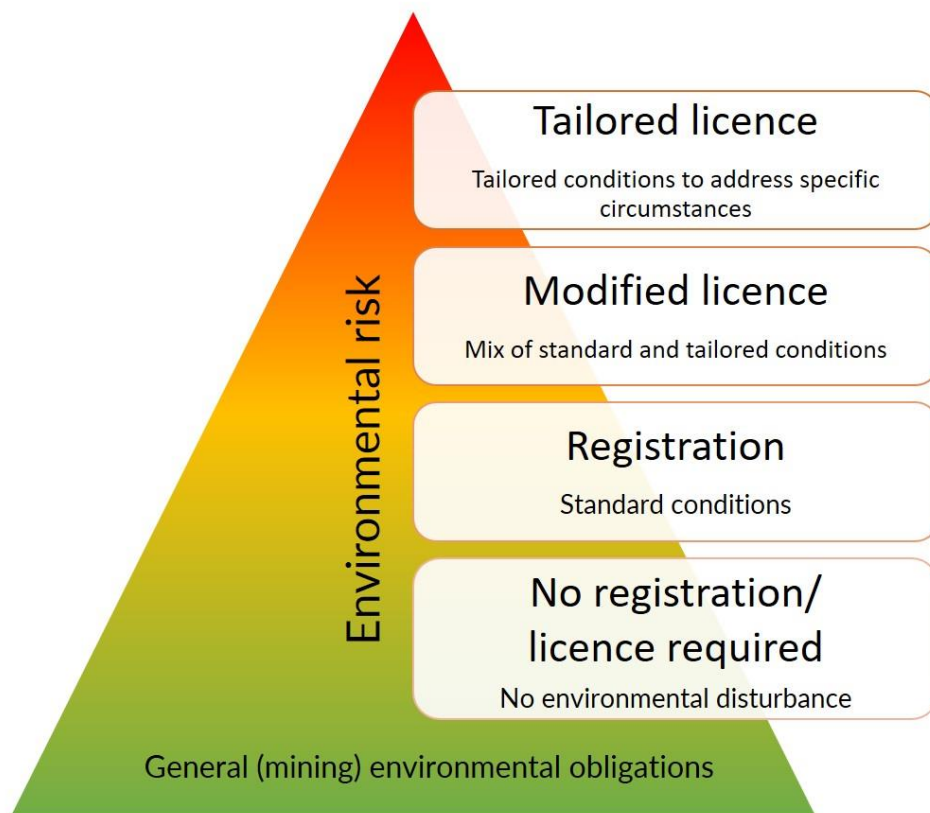
This scheme will replace the current on/off-tenement management approach, by enabling environmental impacts, whether occurring within or outside of the mine site, to be managed through the one instrument<sup>9</sup>. For example, many mining activities have been required to obtain a waste discharge licence under the Water Act because their waste discharges to water have not been fully contained within the mine site. Under the new scheme, a waste discharge licence would not be required as these discharges would also be addressed through the environmental registration or licence.

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<sup>9</sup> Note, activities that have undertaken environmental impact assessment may also hold an environmental approval issued by the Environment Minister to manage the significant impacts associated with the activity.

The scheme (Figure 1) would comprise:

1. An environmental registration for activities considered lower in risk and able to be managed based on identified risk criteria and standard conditions.
2. An environmental licensing scheme that comprises 2 tiers:
  - a. Modified standard conditions – for moderate risk activities where some aspects of the standard requirements for the identified risks do not strictly apply or the required environmental outcomes can be met by an alternative means.
  - b. Tailored conditions – for high risk activities that do not conform to the standard risk criteria and conditions and will need a tailored licensing approach to achieve the required environmental outcomes.



**Figure 1:** Environmental (Mining) Management Model

To determine the tier applicable for an activity, a risk screening process will commence with the categorisation of the activity into type – exploration, extraction or mining operations, with environmental risk generally increasing from the former to the latter. Risk would then be further delineated for each mining type based upon a set of ‘risk criteria’ (such as locality or extent of land disturbance) and ‘standard

requirements' (outcomes that are to be achieved) established by government. Table 1 (at the end of this paper) provides examples of possible risk criteria and standard requirements.

Environmental registrations and licenses will be granted (or refused) by the DEPWS Chief Executive Officer (CEO).

This approach ensures that resources are focused on those mining activities that pose the greatest risk to the environment. The application process will allow a proponent to nominate environmental registration, modified environmental licence or tailored environmental licence.

Applications for registration and licencing will be subject to the fit and proper person provisions contained in the EP Act.

#### **CONSULTATION QUESTIONS: REGISTRATION & LICENCING SCHEME OVERVIEW**

4. 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.
5. Are there any mining related activities that currently require authorisation and a mining management plan that should not be subject to the new framework?
6. Are there mining related activities that are not currently required to be authorised that should be under these reforms?

### **6.3. Environmental registrations**

An environmental registration would be available to mining activities that can meet the standard requirements specified for that activity based on the risk screening and risk criteria process outlined above. The standard requirements would then translate into statutory obligations of the registration. These are activities that should represent minimum risk and accordingly minimum assessment required by DEPWS.

It is likely that all exploration activities and some extractive activities will operate according to an environmental registration. On registration, an applicant would be issued with a 'registration certificate' confirming the conditions that apply and environmental outcomes that are to be achieved.

To the extent allowable by law, registrations will be valid for the life of the registered mining activity, and may be transferred between operators, suspended or revoked.

Registrations will be subject to standard conditions to manage environmental impacts. Different conditions are likely to be based on the type of activity that is being registered; i.e. conditions associated with the registration of an exploration activity would be different to those associated with registration for an extractive activity.

### **6.4. Environmental licences**

Environmental licences will be available for those operators that cannot meet the standard risk criteria or conditions and therefore cannot operate under an environmental registration.



It is anticipated that most extractive activities and some mining operations will be able to operate under a modified standard condition licence. This type of licence will be available where an operator can meet most, but not all, of the requirements of registration. It will use the standard conditions of registration with modifications to meet the specific needs of the operator.

Mining activities that cannot meet the risk criteria and the standard requirements would be directed towards a more conventional licensing approach where environmental licence conditions are tailored to the identified risks (i.e. a 'tailored' licence). This licensing approach is most likely to capture mining operations.

To the extent allowable by law, licences will be valid for the life of the licensed mining activity, and may be transferred between operators, suspended or revoked.

To ensure that licence conditions are operating effectively, continue to deliver environmental outcomes in line with community expectations, and reflect the specific environmental risks associated with the stage of the mining activity (i.e. pre-production, production, closure) licences will be subject to periodic reviews as specified in the licence. Where licences do not contain review provisions, the EP Act will identify when licence reviews are to occur.

Although the legislative framework will identify that reviews of conditions can occur as the mining activity enters different phases of its life-cycle, it is recognised that, to the extent practicable and appropriate, licences should already contain conditions relevant to the different stages of the mining activity to ensure that operations are designed and implemented with a holistic understanding of the requirements for environmental management of the activity.

## 6.5. Registration and licence condition reviews

The standard conditions and risk criteria included in the registration scheme will be subject to regular reviews. These reviews will be focussed on determining whether (or not) the standard conditions are delivering the expected environmental outcomes associated with the registered activity. It is not intended that these types of reviews consider whether or not a specific registered operator is complying with the conditions of the registration as this will be addressed through normal compliance and enforcement activities undertaken by DEPWS to ensure that operators are fulfilling their obligations under their registration.

It is proposed that Regulations will identify a consultative process involving the mining industry and other stakeholder groups to develop risk criteria and conduct reviews of the risk criteria and registration conditions.

The DEPWS CEO would be able to amend the conditions of registration on completion of a review, and all mining operators operating under the registration scheme would be bound by the amended conditions. To assist operators that may be unable to immediately comply with the revised conditions, it is proposed to allow the DEPWS CEO and operator to enter into 'performance improvement agreements'. These agreements will ensure the operator has sufficient time in which to become compliant with the changed conditions of a registration (e.g. to upgrade a treatment system in order to achieve a revised discharge/emission standard outcome).

These performance improvement agreements are not intended to be a compliance or enforcement tool. As such, the CEO would not be able to commence criminal or civil proceedings for an alleged breach of the conditions of registration in respect of a matter covered by a performance improvement agreement during the period that the agreement is in place. This would not prevent the CEO from cancelling the agreement



where the operator is not complying with the terms of the agreement and the objectives of the environmental legislation are not being met.

The DEPWS CEO will be able to amend the conditions of a licence as part of a licence review and at other times specified in the legislation. This is likely to include:

- at the request of the mining operator
- where monitoring and reporting activities identify that the conditions of the licence are not achieving the desired environmental outcomes and in the reasonable opinion of the CEO an amendment to the conditions is necessary or convenient to prevent environmental harm
- where in the reasonable opinion of the CEO the operator has breached conditions of the EP Act or licence (whether or not compliance or enforcement action has been taken in respect of that breach) and an amendment to the conditions is necessary to prevent environmental harm
- where there is a change in the proposed activities or mining methods that result in an altered risk
- where an operator intends to exit a care and maintenance period
- where an operator moves from one stage of mining development to another (e.g. from establishment activities to operational activities, or operational activities to closure activities).

## CONSULTATION QUESTIONS: REGISTRATIONS – LICENCES – REVIEWS

7. Under what other circumstances should the CEO be able to amend the conditions of a licence?

### 6.6. Independent specialist review and sign-off

The evaluation and regulation of the environmental impacts of higher risk activities often involves highly specialised expertise. For example, it may be necessary to validate hydro-geological modelling, or to advise on innovative and new approaches to managing specific types of impacts (e.g. greenhouse gas emissions). Circumstances may also arise where the validity of the information provided by an applicant for an environmental licence is contested and needs to be verified, or detailed designs may need to be signed-off by a certified professional in the relevant field of expertise.

It is proposed that the DEPWS CEO be able to require, as part of an application or as a condition of an environmental licence:

- information to be prepared by a qualified person, or
- requirements for a third party peer review of the information prepared by a qualified person, or
- requirements for the applicant to meet the reasonable costs associated with the CEO obtaining a third party peer review of the information prepared by a qualified person<sup>10</sup>. Where the CEO intends to exercise this power, the CEO would be required to consult with the applicant prior to the CEO engaging the person to prepare the peer review.

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<sup>10</sup> In this respect, a qualified person would be a person who has the relevant skills, experience or qualifications specified by the CEO in the circumstances.

Similar provisions exist for the environmental impact assessment and approval process and will be included for all environmental activities regulated under the EP Act.

Mining operators already obtain peer review reports for a range of reasons – including at the request of both regulators and prospective financiers. Administratively there may be opportunities to streamline assessment processes by ensuring peer reviews and other reports are developed on a “prepare once, use many” basis. To achieve this, it will be necessary for regulators to have a good understanding of what requirements other regulators may be imposing and how terms of reference for reports can be structured to meet the requirements of each regulator.

#### CONSULTATION QUESTIONS: INDEPENDENT SPECIALIST REVIEWS

8. 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?
9. 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?

## 6.7. Public participation and transparency

Consistent with commitments to improve transparency in decision making, DEPWS intends to recommend the following provisions apply to the application stage of each of the environmental registration and licensing schemes established under the EP Act, including the scheme for mining activities:

1. For those activities requiring a licence<sup>11</sup> (but not registration) – the licence application will be advertised if the activity was not the subject of an environmental impact assessment process.
2. For those activities requiring a licence (but not registration) – the licence application will not be advertised if the activity was the subject of an environmental impact assessment process.
3. For those activities requiring registration – no advertising requirements as part of the application process.

Timeframes for advertising periods will be determined in consideration of any existing advertising timeframes, advertising timeframes within the environmental impact assessment process, and advertising timeframes in other jurisdictions.

Once granted, all licences and registrations, including the conditions placed on those licences and registrations, will be made publically available as part of a Public Register.

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.

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<sup>11</sup> Note – there may be minor adjustments to this depending on the nature of the activity. For example, it is unlikely that applications to transport waste (should these require licensing rather than simply registration) will be required to be advertised as there would appear to be little public benefit in doing so.

The specific reports, and timing for their delivery, would form part of conditions included in the environmental registration or licence. The types of reports that are anticipated include:

- reports of compliance against the environmental registration or licence
- reports of the activities undertaken in relation to the registered or licensed activity over the preceding period and any environmental impacts associated with the activity
- reports associated with the duty to notify of an incident and to record an incident.

The reports, and other documentation that is required to be provided as part of a condition of a licence or registration, for example monitoring reports and rehabilitation and closure plans, would also be made publicly available through the Public Register. It is also expected that the CEOs annual report would include matters associated with DEPWS's compliance activities and provide information about the achievement of decision making timeframes.

## 6.8. Improving timeliness and certainty

To improve accountability and certainty in the decision making process, all steps of the environmental licencing and registration process will include decision making timeframes. Decision making timeframes may be extended by agreement with the operator, and, where appropriate, may be subject to 'stop the clock' processes to ensure that decision makers are able to access the necessary information to inform a decision. Consistent with the EP Act, 'stop the clock' provisions would not "reset" the clock, rather they would place a hold on the licence or registration assessment process with the clock recommencing when the information is received.

## 6.9. Environmental incident reporting and recording

The EP Act requires incidents which cause, or may cause, material or serious environmental harm to be reported 'as soon as practicable' but within 24 hours. These obligations are consistent with existing obligations placed on mining activities under the MMA and on sectors regulated under the *Waste Management and Pollution Control Act 1998*.

These reporting requirements will be extended to all persons regulated by the EP Act as environmental reforms are completed.

In the first instance, these reporting obligations will be extended to mining activities. Administrative processes will be put into place to ensure that operators are not subject to duplicative environmental reporting requirements.

In addition, it is proposed that all environmental registration and licensing schemes, including the mining scheme, will require registered and licenced persons to record incidents that cause environmental harm. Recordable incidents would be reported annually (or as otherwise specified in the conditions of the environmental registration or licence) and are designed to provide a mechanism to identify those small incidents that may demonstrate systemic concerns that should be addressed by the registration or licence holder.

Reported and recorded environmental incidents would also be made publicly available.

## 6.10. Environmental compliance and enforcement

Both the EP Act and MMA contain a range of tools that can be used to require mining operators to comply with their obligations to manage impacts on the environment.

Individual operators will be required to comply with the conditions of an environmental registration or licence and the mining authorisation, and compliance and enforcement action may be taken where an operator is not complying with their responsibilities.

Where compliance and enforcement processes identify that a registered operator is unable to comply with the standard conditions of an environmental registration, it is proposed that the DEPWS CEO may require the operator to apply for a licence, and grant the operator a licence and revoke the registration. In some instances, for example, where significant unauthorised environmental harms have occurred and the operator has not taken steps to address these harms, it may be appropriate for the CEO to refuse to grant a licence to the operator. It is proposed that the legislation include 'show cause' processes where the CEO intends to revoke a registration and grant a licence or to revoke a licence.

Alternatively the DEPWS CEO may choose to use the proposed 'performance improvement agreement' process (as outlined above) to improve environmental outcomes for a registered or licensed operator.

### CONSULTATION QUESTIONS: COMPLIANCE & ENFORCEMENT

10. 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?

## 6.11. Mine remediation and environmental licence surrender

Best practice mining management requires planning for mine closure to be integral to mine feasibility studies, mine development and operational planning, with detail increasing as the mine moves towards closure, rather than left to the end of mining operations.

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.

At the cessation of mining and the successful completion of closure requirements the operator will need to apply to surrender the environmental registration or licence. DEPWS will consider the application and determine whether the agreed environmental outcomes and closure objectives have been achieved. Once DEPWS has determined the agreed environmental outcomes and closure objectives have been achieved it will accept the surrender and advise DITT which will, subject to its own regulatory requirements, issue a mine closure certificate and return the security.

As part of the process to improve certainty and guidance for proponents, mine environmental remediation guidelines will be developed.

## 6.12. Reviews of environmental decisions

The EP Act identifies that decisions made under the Act in relation to the environmental impact assessment and environmental approval process are subject to judicial review (review by the Court). The Act also identifies who may seek a review. These reviews are limited to determining whether the decision was made legally.

There are a small number of decisions made by environmental officers and the CEO of DEPWS that can be reviewed by the Northern Territory Civil and Administrative Tribunal (NTCAT). This is a merits review process that considers whether the decision that was made was the “right” decision.

The Territory Government has previously committed to introducing merits review for appropriate environmental decisions. Registration and licensing decisions are appropriate for merits review.

It is proposed 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) will be able to seek the review. This is consistent with the EP Act.
- 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.
- 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.

Merit reviews will be conducted by the NTCAT.

## 7. Proposed mining management regulatory reforms

The MMA will require significant consequential amendments to give effect to the proposed environmental regulatory reforms with the removal of sections in the current MMA that deal specifically with environmental management.

As part of the reform process to the management of mining, it is also proposed to:

- Improve operational and administrative definitions and processes to provide greater clarity.
- Reduce regulatory burden and provide for a streamlined approval process to authorise mining activities by removing the need for mining management plans in their current form.
- Provide for clear and cost effective avenues for merit review and appeal to the NTCAT for decisions made under the MMA.
- Improve provisions for the ongoing management of legacy mines.

## 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** - refers to periods of mining inactivity that still require active environmental management. Defining this period could increase understanding about any ongoing management obligations.

**Legacy mine site** – currently referred to as unsecured mining activities. Improving definitions for different types of legacy mine sites and features will improve future remediation and active management options and associated management responsibilities and expectations.

**Mine Closure** – with changes to roles and responsibilities for mine remediation and ultimate closure, greater clarity around meaning will improve administrative processes.

**Mining Remediation Fund** – improved definition will assist in streamlining the disbursement and utilisation of funds for remediation work.

**Mining Security** – greater clarification on what disturbance and activities are being secured and which agency is responsible for them will reduce any confusion in the administration process.

## 7.2. Authorisation and Mining Management Plan reform

A significant proportion of the existing authorisation and mining management plan process is focussed on environmental impacts and proposed mitigation and management options. Through this reform process, the mining management plans will be replaced with a more simplified mining plan or program that concentrates only on mining activities including; infrastructure design, infrastructure management and operation systems, staged extraction, decommissioning and mine closure. Environmental impact management will be conditioned and managed separately through the environmental registration and licencing scheme.

### CONSULTATION QUESTIONS: MINING AUTHORISATIONS

11. What improvements to the mining authorisation process do you consider would improve efficiency and effectiveness?

## 7.3. Management of mining securities

All operators that are required to hold a mining authorisation pay a security and levy regardless of the type of mining activity (exploration, extractives or mining operations). These arrangements address both environmental liabilities and non-environmental risks (such as site and public safety) within the authorisation. Securities are designed to be refundable at the completion of agreed closure and rehabilitation activities.

Security provisions are calculated on the level of disturbance associated with the planned mining activities. The security is held for rehabilitation liabilities in the event of operator default prior to closure and surrender of the authorisation or relinquishment of tenure. Under the reform proposals, DITT will continue

to be responsible for administering (including the receipt and management of) the mining security and the associated mining levy and mining remediation fund.

DEPWS will undertake an assessment of the likely level of environmental disturbance and calculate an appropriate security to cover this risk. The environmental security will be a condition of the environmental registration or licence. DITT will be responsible for determining any additional infrastructure security that may be required to manage infrastructure and associated close out requirements under the mining authorisation. DITT will then require the combined calculated environmental security and infrastructure security through the mining authorisation process and manage the security accordingly. This will include requirements that DITT receives written advice from the DEPWS CEO to release any security amount, in part or in whole that is being held for environmental rehabilitation purposes.

The MMA currently allows a mining operator or an affected party to seek a merits review of a decision related to a refusal to issue a mining authorisation, conditions placed on an authorisation and claims on security. The EP Act only allows 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. It may also negatively impact the funds available to Government in the event the operator is unable to fulfil their obligations. On the other hand, allowing these review processes may also facilitate increased transparency and robustness in decision making.

The mining security framework is intended to encourage progressive rehabilitation activities and allow for the graduated return of securities on progressive rehabilitation and achievement of environmental outcomes. This has a financial benefit for mining operators and decreases the financial risk to the Territory Government in the event that rehabilitation is not undertaken or not undertaken to an appropriate standard, while improving environmental outcomes.

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.

As part of the regulatory reform process the security framework and supporting tools will also be reviewed to ensure the framework adequately manages the environmental risks being secured.

## CONSULTATION QUESTIONS: MINING SECURITIES

12. How can the mining securities framework be improved?
13. How can the management of mining securities be improved to provide greater incentives and reward for progressive rehabilitation?
14. What improvements could be made to the calculation of mining securities to better address potential environmental risks and impacts?
15. What other matters would you like to see considered as part of a review of mining security assessment?



## 7.4. Reviews of mining decisions

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.

The MMA also currently includes provisions for merit review of the following decisions, whether made by the Minister or their delegate.

- refusing to approve a MMP and grant an authorisation
- imposing a condition on an authorisation
- varying or refusing to vary, revoke or refusing to revoke a condition of an authorisation
- refusing to approve an amended MMP
- a decision of a mining officer.

As part of the mining reforms the mining board will be replaced with the NTCAT as the point of referral for merit reviews.

### CONSULTATION QUESTIONS: REVIEWS OF MINING DECISIONS

16. Should mining operators have standing to seek a merits review of the proposed environmental and/or infrastructure security? Why?

## 7.5. Management of care and maintenance periods

Care and maintenance is the term used to describe periods of time where a mine operator pauses active mining, generally in response to changing commodity conditions or other business matters. The operator intends to 'reopen' or recommence production at the mine when commodity prices improve and therefore the site is not formally closed and rehabilitated. Care and maintenance periods may last for a few months through to a few years. Care and maintenance periods differ from temporary shutdowns which are a response to a specific circumstance such as a cyclone, bushfire or work health safety incident and will usually only last for a period of days or weeks.

The NT Government recognises that industry needs flexibility to operate profitably in commodity markets but while active mining is no longer occurring during care and maintenance periods, there is still an expectation that environmental impacts on the mine site will continue to be managed and that infrastructure and other equipment will be maintained. To ensure an operator does not use care and maintenance to avoid any environmental management obligations, it is proposed that the revised mining regulatory framework will:

- Provide a statutory definition of care and maintenance periods and notification requirements.
- Include obligations to require mining operators that enter into care and maintenance periods to continue to comply with any environmental registration or licence and all identified conditions and provisions within the EP Act.



- The operator of a mine site will also be able to request a reconsideration of the environmental obligations and the amount of security held provided evidence supporting their request can be provided.

#### CONSULTATION QUESTIONS: CARE AND MAINTENANCE

17. How should 'care and maintenance' be defined?
18. What other mechanisms could be adopted to improve the management of environmental impacts during care and maintenance periods?
19. 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?
20. What, if any, standard obligations for environmental management during care and maintenance periods should be incorporated into the EP Act?

## 7.6. Management of legacy mines

Legacy mines are sites of environmental impact for which no one can be held responsible and which ultimately are left for the NT Government to manage and/or remediate. In acknowledgement of the potential liability associated with legacy mines, an annual 1% levy on mine securities was introduced in 2013. This levy funds the MRF which in turn is used to undertake prioritised remediation works on legacy mine sites.

The MRF is disproportionately small relative to the potential liabilities associated with legacy sites. Therefore, expenditure from the MRF is undertaken using a risk based assessment and prioritisation process. It is not intended, nor possible, that every legacy feature will be rehabilitated or that entire sites will be addressed. In many cases, it is more prudent to address the key features causing harm rather than the entire site.

The ongoing management of legacy mine sites is to be retained in DITT with the associated provisions remaining in the MMA. Where relevant, the EP Act will reference the MMA with respect to legacy mines. When managing legacy mine sites the NT Government is actively rehabilitating pre-existing environmental impacts, rather than causing environmental harm.

As part of the mining regulatory reform process for legacy mine sites the following issues are proposed for review:

- Improving definitions for different legacy mine features to improve future remediation and active management options and associated management responsibilities and expectations.
- Improved governance, collaboration and transparency provisions to streamline remediation of legacy mine features.
- Improved provisions for the management and disbursement of the MRF.
- Consideration of retaining the interest from the MRF in the fund.

## CONSULTATION QUESTIONS: MANAGING LEGACY MINES

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?
22. In what ways can industry be encouraged and supported to play a larger role in undertaking remediation works on legacy sites?

## 7.7. Land access arrangements

A mineral title issued under the *Mineral Titles Act 2010* confers a number of rights to the mineral title holder, including the right to enter and occupy land, to use water and to construct an access road. A title holder must currently give 14 days' notice to a landowner before exercising those rights. Where the activity will cause 'substantial disturbance' such as land clearing, earthworks, building roads, drilling wells or extracting resources, an authorisation is also required under the MMA. In the case of an authorisation for exploration activities, DITT require that evidence of a land access agreement between both parties is provided within 60 days. If no evidence can be produced, either party can request a determination from the land access assessment panel. If either party is dissatisfied with this outcome the matter can be referred to the NTCAT.

Land access requirements and administration is not currently prescribed through legislation, but is routinely implemented in practice, as outlined above. A code of conduct for mineral explorers in the Northern Territory has been developed to outline best practice operational and environmental management of mineral exploration in the NT.

## CONSULTATION QUESTIONS: LAND ACCESS ARRANGEMENTS

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?

## 8. Transitional arrangements

It will be necessary to develop systems and processes that enable the transfer of existing mining operations into the new regulatory system.

It is intended that transitional processes have minimal impact on operations, whilst occurring in a timely manner that limits the period required for the Territory Government to run parallel regulatory systems. Maintaining parallel regulatory systems increases complexity and cost for regulators and operators.

For those exploration, extractive or mining operations (other than activities in care and maintenance), that have been issued with a mining authorisation and hold an approved mining management plan it is proposed that the operator will be required to seek an environmental registration or licence when:

- (a) proposing a change to the existing approved authorisation, or
- (b) in any event, within a period specified in the EP Act. This period would nominally be between 12 months and 3 years, and may differ between the different types of mining activities.

For those activities that have been issued with a mining authorisation and hold an approved mining management plan that are in care and maintenance, it is proposed that the operator will be required to seek an environmental registration or licence when:

- (a) proposing a change to the existing approved authorisation, or
- (b) proposing to re-commence operations after being in care and maintenance, or
- (c) in any event, within a period specified in the EP Act. This period would nominally be 12 months.

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.

The potential for a need to transfer existing authorisations and approved MMPs between operators before all activities are covered by the environmental registration and licensing scheme presents a particular challenge. It is appropriate to provide certainty to proposed transferees about the environmental obligations that will be imposed, and the outcomes that are expected. At the same time, allowing the transfer of existing instruments may extend the time during which the NT Government must manage parallel authorisation processes and reduce certainty for industry and the community about the regulatory scheme.

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.

The suitability of these various options may also be impacted by the stage of the transfer process when the new regulatory scheme commences. Transitional arrangements will also be required to enable existing transfer processes to be completed.

It is intended that regardless of the transitional provisions that are agreed, operators will be able to 'opt in' to the registration and licensing system before the expiration of the relevant transition period where this aligns with their individual business needs.

## CONSULTATION QUESTIONS: PROPOSED TRANSITIONAL ARRANGEMENTS

24. How would the proposed transitional arrangements effect your mining activity?
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?
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?
27. Are the proposed arrangements for non-finalised processes appropriate? If not, what alternative processes should be considered?
28. What arrangements would you propose for operators that wish to transfer the mining activity?

## 9. Future reform activities

The Territory Government has committed to a range of environmental reforms. This paper addresses reforms associated with mining activities. In addition, there are other matters that are under consideration that relate to the mining industry and may form part of future reforms.

Your responses to these questions will inform future policy development in these areas. Specific consultation on these matters will be undertaken separately.

Separate consultation material will also be prepared identifying proposals for improving the Territory's management of wastes and pollution, land clearing and other environmentally high risk activities.

### 9.1. Residual risk payments

Residual risks are the risks that remain at the completion of all required rehabilitation and closure activities for a development site. Acknowledging these risks recognises that:

1. all structures and facilities that may remain at a site (no matter how well designed and maintained during operations) will require a level of ongoing monitoring and maintenance and repair, and potentially replacement in the future
2. rehabilitated areas may require ongoing maintenance, or may fail to perform as predicted and require additional works.

Examples of residual risks related to mining include:

- pit wall or shaft cap stability
- subsidence or erosion from buried infrastructure
- tailings egress and tailings storage facility stability
- waste rock dump/tailings and cover stability in relation to acid and metalliferous drainage generation
- long term stability of pit flood protection bunds and water course diversions.

Consideration of residual risks is not intended to prevent agreed site structures from remaining in situ as part of closure and surrender planning. However, placing a cost on such site features as part of closure and surrender may incentivise better practices and ensures that the costs of any environmental harm arising from these features, and which must be appropriately managed, is borne by the mining operator.

These types of costs, charged at closure and surrender, are known as ‘residual risk payments’.

Residual risk payments are designed to address long terms risks and costs that remain associated with a development site, while providing an end point for an operator to surrender the site and Government to return any security that may be held. These payments recognise that post surrender management is an ongoing and necessary requirement of many mining activities. The funds are ‘quarantined’ – either permanently or for a pre-agreed number of years – to ensure they are available to address the specific requirements of the site.

Examples of post surrender management activities and liabilities include:

- periodic inspections and reporting
- routine monitoring and maintenance
- repairs to address hazards to public safety; e.g. repairs to fencing
- costs associated with catastrophic failures due to unforeseen events such as cyclones, flooding or fires.

In essence, residual risk payments allow an operator obtain a closure certificate and “walk away” from the site with no further liability.

Residual risk payments differ from mining securities. Mining securities are intended to be returned to the mining operator at the completion of the agreed closure and rehabilitation activities, which may include repayments at the completion of agreed progressive rehabilitation activities. Securities ensure that funds are available to the NT Government in the event a mining operator does not, or is unable to, complete its rehabilitation obligations.

Residual risk payments also differ from the mining levy. The mining levy is imposed across the mining industry to generate funds to manage existing legacy mine sites, not to address future liabilities for appropriately rehabilitated sites.

Queensland, New South Wales and Victoria all have environmental management systems that enable the collection and management of residual risk payments, as does Canada.

As part of the environmental regulatory reforms, the NT Government is considering introducing a system for requiring residual risk payments for any activity that seeks to close and ‘surrender’ the land. This system would include mining activities as well as other activities where structures remain in situ, such as landfill sites.

Development of a residual risk framework is currently being explored, with the view to introducing a framework during a later stage of the reform program.

## 9.2. Chain of responsibility legislation

In 2016, the Queensland Government introduced 'chain of responsibility' legislation<sup>12</sup> to respond to the issue of companies, particularly those in financial difficulty, avoiding their environmental obligations. These laws ensure that the community is not left meeting the costs of environmental failures. The laws enable the Queensland Government to direct a 'related person' of a company in financial difficulty to take actions to prevent or minimise environmental impacts, rehabilitate land, or undertake other specified activities.

A 'related person' under the legislation includes parent companies and those who have a relevant connection to the company due to 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.

The NT Government has committed to introducing chain of responsibility laws as part of the regulatory framework for managing petroleum activities. It is investigating whether these laws should also apply to other environmentally impacting activities, including mining. If progressed, these laws would be introduced separately to the mining reforms.

### CONSULTATION QUESTIONS: RESIDUAL RISK PAYMENTS – CHAIN OF RESPONSIBILITY

29. What elements would you like to see included in a residual risk framework?
30. Are there specific matters that should be considered as part of developing a residual risk framework applicable to mining activities?
31. What benefits might there be to applying chain of responsibility laws to mining and other environmentally impacting activities?

## 10. Next steps - Have your say on the proposals

The Departments of Environment, Parks and Water Security and Industry, Tourism and Trade will meet with key stakeholders to discuss the proposals contained in this paper.

You can arrange a meeting by contacting the Environment Policy team on 8924 4051 or via email [environment.policy@nt.gov.au](mailto:environment.policy@nt.gov.au).

You may also wish to provide written feedback about the matters discussed in this paper or provide other suggested improvements to the Territory's environmental regulatory framework.

To ensure your written comments are as effective as possible please:

- clearly identify the issue you are addressing, with reference to a section of this paper if applicable
- clearly state your point of view, and provide any information you may have that supports your view
- suggest any alternatives you believe will result in a better outcome.

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<sup>12</sup> More information on these laws is available on the Queensland Parliament and Department of Environment and Science websites.

Unless you advise us otherwise, we will treat any written comments you make as public documents. This means a copy of your comments will be published on our website, and we may cite your submission in other documents that we prepare.

If you do not wish us to make your written comments public, or you do not want your identity to be made public, please ensure you include this information with your comments.

Please submit written comments by sending a submission to:

Environment Policy  
Department of Environment, Parks and Water Security  
GPO Box 3675  
Darwin NT 0801

Email: [environment.policy@nt.gov.au](mailto:environment.policy@nt.gov.au)

**Table 1:** Examples of possible risk criteria and standard requirements

		Exploration	Extractive industries	Mining
Risk criteria	Location based	<ul style="list-style-type: none"> <li>Location outside of a declared conservation area (e.g. National Park)</li> <li>Location outside of a declared heritage place</li> <li>Location outside of town boundaries</li> </ul>	<ul style="list-style-type: none"> <li>Location outside of a declared conservation area (e.g. National Park)</li> <li>Location outside of a declared heritage place</li> <li>Location outside of town boundaries</li> <li>Location outside of the mapped distribution of the Howard River Sand Sheet</li> </ul>	<ul style="list-style-type: none"> <li>Location outside of a declared conservation area (e.g. National Park)</li> <li>Location outside of a declared heritage place</li> <li>Location outside of town boundaries</li> <li>Location outside a Site of Conservation Significance</li> <li>Location outside of a Site of Botanical Significance</li> <li>Location outside of the mapped distribution of the Howard River Sand Sheet</li> <li>Location outside of the mapped distribution of sensitive vegetation types: mangroves, riparian or monsoonal vine thicket</li> <li>Location outside of the mapped distribution of a Threatened Ecological Community listed under the EPBC Act</li> <li>Location outside of a Water Control District within the meaning of the <i>Water Act 1992</i></li> </ul>
	Activity based	<ul style="list-style-type: none"> <li>Total disturbance footprint does not exceed X ha</li> <li>Scrape and detect operations open at any one time do not exceed X ha</li> <li>Excavation from following activities do not exceed X ha open at any one time:                             <ul style="list-style-type: none"> <li>Costeaming</li> <li>Auguring by machine</li> <li>Bulk sampling</li> <li>Underground exploration</li> <li>Investigative purposes e.g. geotechnical test pitting and soil sampling</li> </ul> </li> <li>No more than X m<sup>2</sup> will be disturbed at any one location (excluding camp sites)</li> <li>No more than X m<sup>3</sup> of materials will be removed</li> </ul>	<ul style="list-style-type: none"> <li>Total disturbance footprint does not exceed X ha</li> <li>No more than X ha will be disturbed at any one location</li> <li>No more than X m<sup>3</sup> of mine materials will be removed</li> <li>Excavation for quarrying does not exceed X m in depth</li> <li>No blasting is undertaken</li> <li>No extraction of riverine material</li> <li>Processing of sand, soil, gravel or rock occurs only through mechanical means</li> <li>No construction of a dam for containing slimes</li> <li>Excavation or clearing of vegetation does not occur in standing waters, wetlands or</li> </ul>	<ul style="list-style-type: none"> <li>Total disturbance footprint does not exceed X ha</li> <li>No more than X ha will be disturbed at any one location</li> <li>No more than X m<sup>3</sup> of mine materials will be removed</li> <li>Excavation or clearing of vegetation does not occur in standing waters, wetlands or lakes; or within or on the levee banks of the normal flow channel</li> <li>Mining does not leave a pit-lake or final void as a post-mining land form</li> <li>Mining does not create a tailings or residue storage facility, waste dump, overburden stockpile that contains:                             <ul style="list-style-type: none"> <li>radioactive material</li> </ul> </li> </ul>



	Exploration	Extractive industries	Mining
	<ul style="list-style-type: none"> <li>The processing of ore samples do not involve chemicals (other than water)</li> <li>Excavation, drilling or clearing of vegetation does not occur in standing waters, wetlands or lakes; or within or on the levee banks of the normal flow channel</li> </ul>	<p>lakes; or within or on the levee banks of the normal flow channel</p>	<ul style="list-style-type: none"> <li>material capable of generating acid and metalliferous drainage, including neutral drainage and saline drainage</li> <li>The mining operation does not involve ancillary activities</li> <li>Chemical processing of ores is not undertaken</li> </ul>
Standard requirements	<ul style="list-style-type: none"> <li>Blade-up approach for clearing is to be used (i.e. no windrows, leave root stock and topsoil)</li> <li>Where blade-up techniques cannot be employed, topsoil and vegetation will be stockpiled appropriately for remediation purposes</li> <li>Significant vegetation will be avoided during clearing (e.g. large trees)</li> <li>Vegetation clearing during, and immediately after rainfall events, will be avoided</li> <li>Vegetation clearing will be kept to the minimum required to safely traverse vehicles and drill rigs along tracks and drill pads</li> <li>Not cause an unreasonable release of dust</li> <li>Excavations (sumps, costeans and pits) to be appropriately ramped to allow fauna egress</li> <li>Drill holes to be securely capped immediately after drilling</li> <li>Vehicle hygiene measures to be employed to prevent the introduction and spread of invasive species and pathogens</li> <li>No erosion to occur on disturbed areas, on tracks and in remediated areas</li> <li>All excavations backfilled within 6 months of completion of drilling</li> <li>Progressive rehabilitation will be implemented</li> <li>Stakeholder engagement and Land access agreement reached</li> </ul>	<ul style="list-style-type: none"> <li>Minimise the area of ground disturbance throughout the life of the operation</li> <li>Significant vegetation will be avoided during clearing (e.g. large trees)</li> <li>Vegetation clearing during, and immediately after rainfall events, will be avoided</li> <li>Not cause an unreasonable release of dust or unacceptable generation of noise</li> <li>Vehicle hygiene measures to be employed to prevent the introduction and spread of invasive species and pathogens</li> <li>all reasonable measures to minimise the generation of slimes material</li> <li>An Erosion and Sediment Control Plan (ESCP) is to be developed by a suitably qualified and experienced person in erosion and sediment control and follow the IECA Best Practice Erosion and Sediment Control Guidelines 2008. The ESCP is to be reviewed and approved by a certified professional in Erosion and Sediment Control.</li> <li>Rehabilitated areas are to be left in a stable, safe non-polluting state; suitable for the planned final use; not excessively affected by erosion; free from declared weeds; and supporting vegetation cover that is consistent with the final land-use.</li> </ul>	<ul style="list-style-type: none"> <li>Minimise the area of ground disturbance throughout the life of the operation</li> <li>Significant vegetation will be avoided during clearing (e.g. large trees)</li> <li>Vegetation clearing during, and immediately after rainfall events, will be avoided</li> <li>All rubbish and scrap to be progressively disposed of at an approved waste facility.</li> <li>All waste dumps, stockpiles or other mining related landforms to be rehabilitated to form safe, stable, non-polluting structures that are integrated with the surrounding landscape and support self-sustaining, functional ecosystems consistent with the approved final land use</li> <li>All activities not to have a detrimental effect on the natural water flow through the lease and surrounding areas</li> <li>All reasonable measures to be taken to prevent or minimise the generation of dust from materials handling operations, stockpiles, open areas and transport activities.</li> <li>An Erosion and Sediment Control Plan (ESCP) is to be developed by a suitably qualified and experienced person in erosion and sediment control and follow the IECA Best Practice Erosion and Sediment Control Guidelines 2008. The ESCP is to be reviewed and approved by a certified professional in Erosion and Sediment Control.</li> </ul>

	Exploration	Extractive industries	Mining
		<ul style="list-style-type: none"> <li>Progressive rehabilitation will be implemented</li> </ul>	<ul style="list-style-type: none"> <li>Rehabilitated areas are to be left in a stable, safe non-polluting state; suitable for the planned final use; not excessively affected by erosion; free from declared weeds; and supporting vegetation cover that is consistent with the final land-use.</li> <li>Progressive rehabilitation will be implemented</li> </ul>

Taken from Buick, A, 'Future Regulatory Framework for Environmental Management of Mining Activities', Table 3, p.27-28 Adapted from Government of WA 2015a and 2017, DEHP 2016, DPIR 2018, DPI 2010

## Consultation questions

1. 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? If not, why?
2. What alternatives should be considered?
3. What other general (mining) environmental obligations should be included?
4. 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.
5. Are there any mining related activities that currently require authorisation and a mining management plan that should not be subject to the new framework?
6. Are there mining related activities that are not currently required to be authorised that should be under these reforms?
7. Under what other circumstances should the CEO be able to amend the conditions of a licence?
8. 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?
9. 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?
10. 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?
11. What improvements to the mining authorisation process do you consider would improve efficiency and effectiveness?
12. How can the mining securities framework be improved?
13. How can the management of mining securities be improved to provide greater incentives and reward for progressive rehabilitation?
14. What improvements could be made to the calculation of mining securities to better address potential environmental risks and impacts?
15. What other matters would you like to see considered as part of a review of mining security assessment?
16. Should mining operators have standing to seek a merits review of the proposed environmental and/or infrastructure security? Why?
17. How should 'care and maintenance' be defined?
18. What other mechanisms could be adopted to improve the management of environmental impacts during care and maintenance periods?

19. 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?
20. What, if any, standard obligations for environmental management during care and maintenance periods should be incorporated into the EP Act?
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?
22. In what ways can industry be encouraged and supported to play a larger role in undertaking remediation works on legacy sites?
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?
24. How would the proposed transitional arrangements effect your mining activity?
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?
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?
27. Are the proposed arrangements for non-finalised processes appropriate? If not, what alternative processes should be considered?
28. What arrangements would you propose for operators that wish to transfer the mining activity?
29. What elements would you like to see included in a residual risk framework?
30. Are there specific matters that should be considered as part of developing a residual risk framework applicable to mining activities?
31. What benefits might there be to applying chain of responsibility laws to mining and other environmentally impacting activities?