



## Have your say on the NT's new draft mining Bills

*You can file a submission by 18 September 2023*

### What are the new draft mining Bills?

The Northern Territory (**Territory**) government recently released two draft bills for public consultation (**draft Bills**):

1. The Environment Protection Legislation Amendment (Mining) Bill (**EP Mining Bill**); and
2. The Legacy Mines Remediation Bill (**Legacy Mines Bill**).

These draft Bills are intended to deal with the environmental impacts of mining and propose to completely overhaul how mining is regulated in the Territory. They have not yet been introduced into the Territory Parliament. Instead, the government is seeking feedback from the public to inform revisions to the draft Bills which will ultimately be debated before the Territory Parliament.

A copy of each of the draft Bills and supporting factsheets are available on the Territory Government Have Your Say webpage under [Environmental Reforms](#) and [Legacy Mines Remediation](#).

### How can I be involved?

To have your say about the NT's proposed new mining Bills you can file submissions in relation to one or both Bills by **18 September 2023**.

Submissions on the Environment Protection Legislation Amendment (Mining) Bill can be made to the [Department of Environment, Parks and Water Security](#).

Submissions on the Legacy Mines Remediation Bill can be made to the [Department of Industry, Tourism and Trade](#).

The submissions should identify elements of the draft Bills that you support, and elements that you believe should be strengthened. For the greatest impact, we recommend including issues that matter the most to you. Personalising your submissions makes a difference.

EDO's policy experts have reviewed the draft Bills and identified elements that should be supported, and elements that should be strengthened. You can use these in your submissions and/or come up with your own ideas for supporting and strengthening the draft Bills.

### What does this briefing note cover?

There is a **Guide to the Key Issues** on the following 3 pages. For more detail on each of these issues and an independent expert analysis of the draft Bills, read the full Briefing Note. We outline the big

wins we see in the draft Bills, as compared with the current regulatory scheme. We also discuss the key shortcomings in the draft Bills and what we see as the biggest areas for improvement.

This Briefing Note does not purport to cover every aspect of the reform proposal or exhaustively identify areas for feedback or improvement; we have focused on key areas noting the short timeframe for public comment.

*If you have any questions about the material contained in this Briefing Note or would like to find out more about how to engage in this important reform process, please do not hesitate to contact our office at [darwin@edo.org.au](mailto:darwin@edo.org.au).*

## **Guide to the Key Issues**

**This summary focuses on the *Environment Protection Legislation Amendment (Mining) Bill*, except where reference is made specifically to the *Legacy Mines Remediation Bill***

<b>We support:</b>	<b>This is important because:</b>
The Minister for the Environment and the Department of Environment, Parks and Water Security being responsible for the <b>environmental regulation of the mining industry</b> .	The Minister and Department responsible for promoting the industry will no longer be responsible for regulating the industry, removing a significant conflict of interest.
The <b>requirement to publish</b> environmental (mining) licences ( <b>Mining Licences</b> ), transfers of Mining Licences, security bond amounts and plans submitted by operators under the legislation and licence conditions.	The public will have better access to information about proposed and operating mines in their communities.
Greater recognition that mine sites require <b>monitoring, management and reporting</b> after they finish operating.	One of the most significant environmental challenges faced by the Territory are the long-term environmental impacts posed by mining projects, long after they stop operating.

<b>We support and recommend strengthening:</b>	<b>This is important because:</b>
We support the opportunity for members of the <b>public to comment on Mining Licence applications</b> , in some instances.  We recommend strengthening this to allow the public to comment on all Mining Licence applications.	The public should be involved in all decisions that affect their community and environment.
We support the opportunity to <b>review certain Mining Licence decisions on their merits</b> in	The public should be able to ensure the government is making good decisions about

<p>the Northern Territory Civil and Administrative Tribunal.</p> <p>We recommend strengthening this to allow merits review of all Mining Licence Decisions.</p>	<p>their environment, by seeking a review of decisions they disagree with.</p>
<p>We support the express requirements for mines in care and maintenance.</p> <p>We recommend strengthening this by only allowing mines to enter <b>care and maintenance</b> in exceptional circumstances, and only for a specified time.</p>	<p>Mines in open-ended care and maintenance in the NT carry significant environmental issues.</p>
<p>We support DEPWS being able to draw on a range of <b>compliance and enforcement</b> mechanisms to hold operators to account for the environmental impacts caused by mining activities.</p> <p>We are concerned that performance management programs may be in place for a long time while exempting operators from liability. We also recommend that mechanisms for third party enforcement be included.</p>	<p>Strong compliance and enforcement mechanisms make it easier to stop environmental incidents before they arise and deter and punish operators who may do the wrong thing.</p> <p>Affected people and communities should be able to hold operators to account including to enforce rehabilitation where required.</p>

We recommend the bill be strengthened by:	This is important because:
<p>From the outset, operators should have investigated and made plans to <b>address all environmental harms</b> associated with their planned mining works and have the <b>funds required to rehabilitate the site</b>.</p>	<p>All mining operations carry long-term environmental impacts that are costly to remediate. Often mining operators do not factor these costs into their business plan and leave these remediation activities and costs to the NT Government and the NT taxpayers. Addressing these costs and environmental risks at the outset will avoid the current situation of the NT Government and citizens carrying this burden.</p>
<p><b>Mining security bonds</b> should be calculated based off a set of mandatory factors. The public should have access to the methodology used to calculate each specific application, beyond those mandatory factors.</p>	<p>Security bond amounts determined by set factors and linked to the full cost of rehabilitating the mine site from the outset will ensure the Territory government and</p>

	<p>Territorians are not left to foot the bill for rehabilitating mine sites.</p> <p>When the public has access to information about mining security bonds they can ensure decisions are being made in the best interest of the people and environment of the NT.</p>
<p><b>Licence conditions</b> should include a set of minimum conditions, with express public input. The public should also be consulted on additional conditions for each specific mining application, regardless of whether an Environmental Approval is also in place.</p>	<p>All proposed mines should adhere to the same minimum conditions. The community knows their local environment best, so is best placed to suggest further specific conditions a mine should adhere to.</p>
<p>Opportunities should be available for <b>Aboriginal Territorians to be engaged in decision-making</b> about Mining Licences and mining operators generally. Aboriginal people should be given review rights of all mining decisions.</p>	<p>The United Nations Declaration on the Rights of Indigenous Peoples recognises that Indigenous Peoples have the right to be involved in decisions that affect them and their Countries, and requires free, prior and informed consent.</p>
<p><b>Cultural heritage assessments</b> and <b>sacred site approvals</b> should be required as a pre-condition to granting mineral titles and Mining Licences.</p>	<p>The decision-maker should be fully informed about the impacts of the proposed mine, before deciding whether to approve it.</p>

We also recommend the following:	This is important because:
<p>The Department of Environment, Parks and Water Security should be given enough <b>resources to properly administer and enforce the EP Mining Bill.</b></p> <p>The Department of Industry, Tourism and Trade should be given enough <b>resources to properly administer and enforce the powers it retains in the Legacy Mines Bill.</b></p>	<p>There will be significant costs of not only reforming the system, but ongoing administrative costs including resourcing and training suitable operational staff.</p>
<p><b>Public consultation on the Bills should be extended.</b> The Bills and material explaining the bills should be available in First Languages, with oral briefings on the proposed Bills provided to Aboriginal communities.</p>	<p>Laws operate better when the people they affect are involved in their drafting. This important reform proposal deserves proper consideration by the community.</p>

# Briefing Note: Have your say on the NT's new draft mining bills

## Introduction

EDO commends the Territory Government for taking this important step to reform our mining laws, which are extremely outdated and not-fit-for purpose. This once-in-a-generation reform process has the potential to significantly improve how mining is regulated for the benefit of Territorians and to ensure the ongoing preservation of the Territory's rich natural and cultural heritage. It also comes at a crucial time when Australia and the world must engage in urgent, large-scale energy transition away from fossil fuels to renewable energy; the Territory holds many of the minerals required for this transition (**transition minerals**).

It is important that we seize this opportunity and get this reform process right. Our mining laws should be designed to deliver outcomes for climate, nature and communities.

**Note:** The laws discussed in this factsheet and the draft Bills do not deal with exploration and production of oil and gas, such as hydraulic fracturing ('fracking'). Those issues are covered by other laws, including the *Petroleum Act 1984* (NT). You can find more information in the EDO Factsheets [Overview of Oil and Gas \(Fracking\) Laws in the NT](#) and [Environmental Assessment and Approval of Gas and Fracking Activities in the NT](#).

**Part 1** of this Briefing Note provides an overview of what the mining industry looks like in the Territory and what is proposed or in the pipeline in coming years.

**Part 2** of this Briefing Note outlines the new reforms.

**Part 3** of this Briefing Note examines the major benefits of the reforms, as well as shortcomings and ways for further improvement and refinement.

## Part 1: What does the mining industry look like in the Territory?

Mining has been a major industry in the Territory over many decades. There are currently 8 major operating mines and numerous smaller mining operations, as well as hundreds of exploration projects and extractive operations which have been approved.<sup>1</sup> The 8 major operating mines are:<sup>2</sup>

- Gulkula Mining – Dhupuma Plateau (bauxite mine, East Arnhem)
- Core Lithium – Finniss (lithium mine, Finniss Region)
- Australian Ilmenite - Sill 80 (ilmenite mine, Roper River Region)
- Newmont – Tanami (gold mine, Tanami region)

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<sup>1</sup> You can see a breakdown of every exploration, mining and extractive mining operation in the Territory on the Department of Industry, Tourism and Trade website, [here](#).

<sup>2</sup> *Mineral Development Taskforce Final Report* (Final Report, December 2022) ('MDT Final Report') 28 <[https://resourcingtheterritory.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/1216930/mdt-final-report2022.pdf](https://resourcingtheterritory.nt.gov.au/__data/assets/pdf_file/0004/1216930/mdt-final-report2022.pdf)>.

- Rio Tinto – Gove (bauxite mine, Nhulunbuy)
- South 32 - Gemco (manganese mine, Groote Eylandt)
- Glencore – McArthur River (zinc, lead and silver mine, near Borroloola)
- Elmore - Peko Tailings (magnetite from tailings, near Tennant Creek)

As at October 2022, there were 1073 granted mining exploration licences covering 22% of the Territory, and 720 mineral leases covering 0.12% of the Territory, including the 8 major mines listed above, operating across 68 mineral leases.<sup>3</sup>

The Territory is also littered with legacy mine sites – mines which have operated in the past but have been abandoned without the land being cleaned up and rehabilitated. These are a blight on the landscape and may continue to pose ongoing environmental risks. In other cases, mines have been opened and then gone into ‘care and maintenance’ - meaning that the mine has closed temporarily and is not being rehabilitated. These mines also pose ongoing environmental risks and challenges. Still other legacy mines continue to undergo complex and ongoing remediation and rehabilitation processes, including the Ranger Uranium mine site (managed by the Commonwealth government), which is surrounded by Kakadu National Park, the Rum Jungle uranium mine site, near Batchelor, and the Sandy Flat (former Redbank Mine) in the Gulf of Carpentaria.

There are many more mining developments in the pipeline, with the Territory government explicitly prioritising the growth of the industry. The Resourcing the Territory website identifies 17 projects in approvals processes as at June 2023, covering a range of commodities including copper, gold, silver, zinc, iron ore, lithium, manganese, magnetite, phosphate and rare earth minerals.<sup>4</sup> Many further projects are undergoing feasibility assessments.<sup>5</sup>

Against this background, it is crucial that we get these mining reforms right.

## Part 2: What do these reforms propose to do?

*The below is a high-level summary and is not exhaustive.*

The Northern Territory Government (the Crown) owns the resources on and under the ground, not the people who own or occupy the land where those resources are located.<sup>6</sup> Under the current law, mining of minerals is controlled under the [Mineral Titles Act 2010 \(NT\)](#) (**Mineral Titles Act**) and the [Mining Management Act 2001 \(NT\)](#) (**MM Act**).

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<sup>3</sup> MDT Final Report (n 2) 25-26.

<sup>4</sup> ‘Developing Projects’, *Resourcing the Territory* (Web Page) <<https://resourcingtheterritory.nt.gov.au/minerals/mines-and-projects/developing-projects>>.

<sup>5</sup> Resourcing the Territory, ‘Northern Territory Major Mines and Developing Projects’ (Data Report, July 2023) <[https://resourcingtheterritory.nt.gov.au/\\_data/assets/pdf\\_file/0010/756559/A23-157b\\_RTT\\_MajorMinesDevProjects\\_withInsets\\_July2023.pdf](https://resourcingtheterritory.nt.gov.au/_data/assets/pdf_file/0010/756559/A23-157b_RTT_MajorMinesDevProjects_withInsets_July2023.pdf)>.

<sup>6</sup> The Commonwealth government owns and regulates uranium in the Northern Territory.

The Mineral Titles Act is the law under which exploration and mining activities are approved or refused on specified areas of land. These types of approvals are known as mineral titles.

Once approved, the MM Act is the law that controls how exploration and mining activities are conducted and what obligations mining companies (**operators**) have to protect the environment. Operators which carry out mining activities causing “substantial disturbance” are required to hold an Authorisation and a related Mining Management Plan (**MMP**) approved by the Minister for Mining and Industry (**Mining Minister**).

The Territory Government has published several **detailed factsheets** which explain different aspects of the draft Bills. You can find them on the Have Your Say website under [Environmental Reforms](#) (for the EP Mining Bill) and [Legacy Mines Remediation](#) (for the Legacy Mines Bill).

The **EP Mining Bill** creates a new system for the licensing of mining operators in the Territory, which will be administered by the Minister for the Environment (**Environment Minister**) and the Department of Environment, Parks and Water Security (**DEPWS**). It amends (makes changes to) the existing [Environment Protection Act 2019 \(NT\)](#) (**EP Act**) and the [Environment Protection Regulations 2020 \(NT\)](#) (**EP Regulations**), as well as making some changes to the Mineral Titles Act. The new licensing scheme replaces the previous system regulating mines under the MM Act, which the Territory Government is proposing to entirely repeal (remove as law). All operators must hold an environmental (mining) licence (**Mining Licence**)<sup>7</sup> if they are carrying out:

- Mining activities (mining for minerals)
- Mining for extractive minerals (mining for sand, gravel, peat etc.)
- Exploration activities, if those activities will cause “substantial disturbance”.<sup>8</sup>

There are **three categories of Mining Licence**. Standard condition and modified condition licences are underpinned by “risk criteria” for the environmental impacts and risks of mining activities,<sup>9</sup> which will be declared by the Environment Minister. Tailored licences are available where risk criteria or standard conditions cannot be met. The idea is the most complex and environmentally risky mine sites will hold a tailored licence.

All Mining Licences are subject to a condition that the operator pay a mining security to secure compliance with the law and the Mining Licence, deal with any actions to be taken to prevent or remedy environmental damage and to cover the costs of completing rehabilitation of the mine site. Operators must also pay a 1% levy which goes into the Mining Remediation Fund.<sup>10</sup>

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<sup>7</sup> EP Mining Bill, s 124L (EP Act).

<sup>8</sup> EP Mining Bill, cl 233R (EP Regulations).

<sup>9</sup> “Mining activity” is defined in the EP Mining Bill, s 13A (EP Act).

<sup>10</sup> Provisions relating to the Mining Remediation Fund which were in the MM Act are now in the Legacy Mines Bill.

**Table 1: Types of Mining Licences:**

Standard condition licence <sup>11</sup>	May be granted if standard conditions approved for that mining activity and risk criteria for the mining activity are met.
	Subject to standard conditions applying to the mining activity
Modified condition licence <sup>12</sup>	May be granted if risk criteria for the mining activity are met, but some of the standard conditions cannot be met, must be modified, or additional conditions are required to appropriately manage the environmental impacts of the mining activity.
	Subject to standard conditions and risk criteria, subject to modifications the Environment Minister determines to ensure environmental risks and impacts are appropriately managed, as well as any further conditions imposed.
Tailored condition licence <sup>13</sup>	May be granted if: <ul style="list-style-type: none"><li>• no risk criteria or standard conditions have been declared or approved for the mining activity</li><li>• standard conditions or risk criteria cannot be met</li><li>• conditions are required which are different from those under a standard or modified condition licence</li></ul>
	Subject to the conditions specified in the licence including any conditions the Minister deems “necessary or convenient” to manage environmental risks and impacts.

Any mining activities with the potential to have a significant impact on the environment also require environmental impact assessment (**EIA**) and the issue of an Environmental Approval by the Minister for the Environment (**Environment Minister**). This is already covered in the EP Act and the EP Regulations. The purpose of the EIA process is to ensure there is no unacceptable impact on the environment, now or in the future, and that all actions that may have a significant impact on the environment are assessed and subject to appropriate conditions.

For more information about the Environmental Impact Assessment process generally, you can read the EDO’s Factsheet on [Environmental Impact Assessment under the EP Act](#).

Under the EP Mining Bill, any mining activity with the potential to have a significant impact on the environment still needs to be referred to the NT EPA for EIA and the issuing of an Environmental Approval. The Environmental Approval will override any inconsistent conditions of a Mining Licence.

<sup>11</sup> EP Mining Bill, s 124ZH (EP Act)

<sup>12</sup> EP Mining Bill, s 124ZI (EP Act).

<sup>13</sup> EP Mining Bill, s 124ZJ (EP Act).

The Territory Government has prepared a [flowchart which explains how to apply for a mineral title and Mining Licence](#) under the proposed reforms, and how this interacts with applications for Environmental Approvals under the EP Act. It also includes the timeframes for assessing different types of licences. Further information can also be found in:

- [Factsheet E2: Environmental Licensing Framework](#)
- [Factsheet E3: Environmental approvals and environmental \(mining\) licences](#)

The **Legacy Mines Bill** specifically addresses the management of “legacy mine sites” and “legacy mine features” – mining infrastructure which has been abandoned. Over 900 such sites and features have been identified across the Territory. It also contains provisions that are currently in the MM Act, such as the requirement for operators to pay a 1% levy to deal with legacy mine sites.

Together, the draft Bills represent a proposed fundamental overhaul of how mining is regulated in the Northern Territory.

### **Part 3: What are some of the big wins and opportunities for improvement?**

*This section focuses primarily on the EP Mining Bill and pulls out some key areas for consideration.*

#### **Major wins**

##### **1. Achievement of regulatory separation by moving the primary responsibility for regulating the mining industry to the Minister for the Environment and DEPWS**

Under the current system, the Mining Minister and the Department of Industry, Tourism and Trade (**DITT**) are responsible for regulating the mining industry and its environmental impacts. If a mining activity would cause substantial disturbance of the mining site, then the Minister must grant an Authorisation and approve an associated MMP under the MM Act to regulate the activity. The Mining Minister is also responsible for setting the security bond for a mining operation.

EDO is pleased that the Draft EP Mining Bill moves environmental regulation of the industry to the Environment Minister and the Department of Environment, Parks and Water Security (**DEPWS**), under the EP Act. This means that the Minister and Department responsible for promoting the industry will no longer be responsible for regulating the industry, removing a significant conflict of interest.

The proposed reforms still leave some responsibility with the Mining Minister and DITT. The Mining Minister retains the power to grant mineral leases to operators under the Mineral Titles Act. In addition, the Mining Minister will issue an “authority to commence or continue” mining activities once a Mining Licence is granted and a security has been paid. The Mining Minister and DITT are responsible for the management of legacy mine sites under the Legacy Mines Bill.

## **2. Improved transparency around mining operations and the environmental conditions operators must comply with**

Currently, applications for Authorisations and the MMPs which are submitted for approval are not publicly advertised. Nor is there any requirement to publish copies of these documents, once issued and/or approved. There is also no requirement for security bonds to be published or the detailed calculations which underpin those bonds. This makes it very difficult for the public to scrutinise mining operations and to challenge problematic decisions where they arise.

Some information about mining operations in the Territory has been made publicly available on Northern Territory Government websites, such as:

- [A spreadsheet of every mining operation in the Territory](#)
- MMPs for [exploration operations](#) and for many of the [major mining operations](#); and
- [A list of all the security bonds currently held by the Territory government.](#)

Whilst helpful, the publication of such information is presently voluntary. Very few Authorisations have been made publicly available, nor all the key documents that mining operators submit to government under those Authorisations.

The EP Mining Bill increases transparency around mining decisions in the Territory, by making it a requirement to publish Mining Licences, any transfers of Mining Licences, security bond amounts and plans submitted by operators under the legislation and licence conditions.<sup>14</sup> This will make it far easier for members of the public to hold operators to account, including by being able to scrutinise any detailed plans submitted under licence conditions. It will also make it easier to challenge Mining Licence decisions, whether through merits review, where available, or by way of judicial review.<sup>15</sup> It also avoids lengthy Freedom of Information processes under the *Information Act 2002* (NT) to try and access this kind of information.

We anticipate that this information will be published on Northern Territory Government websites, similar to Environmental Approvals and other documents under the EP Act, which are published on the DEPWS and/or Northern Territory Environment Protection Authority (**NT EPA**) websites. As discussed below, whilst this is a great step forward, we do not think this goes far enough towards ensuring that all Territorians, and particularly those in remote Aboriginal communities affected by mining, are fully informed and able to engage. Nonetheless, we are pleased to see the inclusion of a discretionary power allowing the Minister to order publication of any report given to the Minister by the mining operator under the EP Act or the conditions of any licence, at a time and in the way the

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<sup>14</sup> EP Mining Bill, cl 282 (EP Regulations).

<sup>15</sup> See **below** for a discussion of merits and judicial review processes.

Minister decides. This could be used to require operators to provide reports in language and/or in locations accessible to the communities most affected by their operations.<sup>16</sup>

### **3. Increased recognition of post-closure monitoring, management and reporting requirements for complex mining projects**

One of the most significant environmental challenges faced by mining operators and by the Territory are the long-term environmental impacts posed by mining projects long after a mine stopped actively operating. Amongst other things, this includes the management of acidic, saline and metalliferous mine drainage, which may require post-closure monitoring and reporting over many decades, if not hundreds or thousands of years, and the maintenance of landforms and structures to manage mine tailings and waste rock if left on site.

The EP Mining Bill expressly recognises that long-term post-closure, monitoring, management and reporting requirements may exist at a mine site and stipulates that conditions pertaining to these issues can be included in Mining Licences as a means of addressing environmental impact, including after the mining activity is completed or the mine site is closed.<sup>17</sup> The proposed laws also recognise that a mining security bond may need to be retained beyond the term of a Mining Licence to meet post-closure monitoring and reporting requirements.<sup>18</sup>

However, EDO retains substantial concerns around the failure to impose mandatory minimum standards around closure and post-closure planning for mine sites, discussed further **below**.

### **Wins, with further opportunities for improvement**

#### **1. Availability of public comment on Mining Licence decisions, but not in all cases**

For the first time, members of the public will have an opportunity to comment in some instances before the Minister decides whether to grant a Mining Licence and on other decisions which inform Mining Licences. This is a big improvement on the current system, where no public comment is available in relation to any application for a mining Authorisation and approval of an MMP.

**Table 2: When can the public comment on decisions relating to Mining Licences?**

<b>Decision</b>	<b>Advertised for public consultation</b>	<b>Timeframe for submissions</b>
Application for a standard condition licence	 <sup>19</sup>	N/A

<sup>16</sup> EP Mining Bill, cl 124ZZZ (EP Regulations).

<sup>17</sup> EP Mining Bill, ss 124W, 124ZA (EP Act)

<sup>18</sup> EP Mining Bill, s 132C(9) (EP Act).

<sup>19</sup> EP Mining Bill, cl 233S and 233T (EP Regulations) require the Minister to publish applications for modified condition and tailored condition licences and invite persons to make written comments to the Minister on whether the licence should be granted or refused within the period specified in the notice (not less than 30 days after the date of the notice). This does **not** apply to applications for standard licences.

Application for a modified or tailored condition licence relating to a mining activity for Environmental Approval required or granted.	 <sup>20</sup>	N/A
Application for a modified or tailored condition licence <i>NOT</i> relating to a mining activity for Environmental Approval required or granted.	 <sup>21</sup>	30 business days (or longer if specified) <sup>22</sup>
Proposed decision to amend the conditions of a modified or tailored condition licence – BUT only where the Minister considers that the proposed amendment is required as a result of substantial alteration to the mining activity. <sup>23</sup>	 <sup>24</sup>	20 business days (or longer if specified) <sup>25</sup>
Application to transfer a Mining Licence to a new operator	 <sup>26</sup>	N/A

We think that members of the public should be able to comment on applications for modified and tailored licences even where an Environmental Approval is required or granted. As discussed below, whilst there are some public consultation requirements for EIA processes, there is no provision allowing the public to comment on the Environment Minister’s proposed decision to grant (or refuse) an Environmental Approval at the end of the process.

**Table 3: When can the public comment on risk criteria and standard licence conditions?**

Decision of the Environment Minister	Advertised for public consultation	Timeframe for submissions
Decision to set standard conditions		N/A
Decision to review standard conditions	 <sup>27</sup>	N/A
Decision to declare risk criteria	 <sup>28</sup>	30 business days (or longer if specified). <sup>29</sup>

<sup>20</sup> EP Mining Bill, cl 233S and 233T (EP Regulations) in relation to publication and public consultation do not apply if the application relates to a mining activity for which an environmental approval has been granted or is required: cl. 233S(2).

<sup>21</sup> EP Mining Bill, cl 233S and 233T (EP Regulations).

<sup>22</sup> EP Mining Bill, cl 233T (EP Regulations).

<sup>23</sup> EP Mining Bill, s 124ZQ(1)-(2) (EP Act).

<sup>24</sup> EP Mining Bill, cl 233W (EP Regulations).

<sup>25</sup> EP Mining Bill, cl 233W (EP Regulations).

<sup>26</sup> EP Mining Bill, ss 124ZZL-ZZT (EP Act).

<sup>27</sup> EP Mining Bill, cl 233N (EP Regulations) provides for consultation with mining operators, not the public.

<sup>28</sup> EP Mining Bill, cl 233D (EP Regulations).

<sup>29</sup> EP Mining Bill, cl 233D, 233E (EP Regulations).

Decision to review risk criteria	 <small>30</small>	30 business days (or longer if specified). <sup>31</sup>
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We understand that the Territory Government intends to consult on standard conditions (and risk criteria) next year, after the Draft Bills are passed. We think it is important that members of the public should be able to comment on the standard conditions, and any review of those conditions, given how important they are to the setting of licences. This is also important as there is no comment available in relation to the decision to grant a standard condition licence (including a decision that a standard, rather than a modified or tailored licence, is appropriate).

**2. Inclusion of some merits review for Mining Licence Decisions, but not all, including not merits review for mining activities with the most significant environmental impact**

The EP Mining Bill also has important opportunities for merits review of certain Mining Licence decisions in the Northern Territory Civil and Administrative Tribunal (**Tribunal**). This means that members of the public, community groups and affected persons can challenge decisions on their merits and argue that another decision should be made.

In a merits review process, the Tribunal will consider all the evidence about a decision to determine what the preferable decision is. This means that the person seeking review can also give the Tribunal new or updated information and arguments which the Environment Minister making the original Mining Licence decision may not have considered.

**Table 4: What merits review rights exist for Mining Licence decisions?**

*Note: Review applications must be brought **within 28 days** of the date the applicant was notified of the decision.*<sup>32</sup>

Reviewable decision	Who can seek merits review?
Environment Minister’s decision to grant or refuse to grant a Mining Licence (except where an Environmental Approval has been granted for the mining activity)	<ul style="list-style-type: none"> <li>• Licence applicant</li> <li>• Person “directly affected” by the decision</li> <li>• Person who has made a “genuine and valid submission” during the mining licensing process</li> </ul>

<sup>30</sup> EP Mining Bill, cl 233G (EP Regulations).

<sup>31</sup> EP Mining Bill, cl 233G, 233H (EP Regulations).

<sup>32</sup> See s 277 of the EP Act as currently in force which notes: The *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) (‘NTCAT Act’) sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews. NTCAT Act, s 94 sets out procedures for commencing proceedings.

Environment Minister’s decision to amend or refuse to amend the non standard conditions of a Mining Licence <sup>33</sup>	<ul style="list-style-type: none"> <li>• Mining operator</li> <li>• Person “directly affected” by the decision</li> </ul>
Environment Minister’s decision to grant or refuse to grant a modified or tailored condition Mining Licence <sup>34</sup>	<ul style="list-style-type: none"> <li>• Mining operator</li> <li>• Applicant for transfer</li> <li>• Person “directly affected” by the decision</li> </ul>
Environment Minister’s decision to amend or refuse to amend the non-standard conditions of a Mining Licence <sup>35</sup>	<ul style="list-style-type: none"> <li>• Mining operator</li> <li>• Person “directly affected” by the decision</li> </ul>

The proposed reforms say that a **genuine and valid submission** for the purposes of seeking a review of a decision in the Tribunal **does not include**.<sup>36</sup>

- A submission by a person in the form of a form response or petition prepared by another body or organisation; or
- A submission made after the end of the submission period, unless the Tribunal considers in the circumstances that it should be considered a genuine and valid submission.

This means that to be able to review a Mining Licence Decision where this type of review is available, if you are not directly affected by the decision, you need to put in a tailored submission in the original public consultation phase. It is not enough to just sign a petition or standard letter about it.

Importantly, the requirement to publish Mining Licence decisions, discussed above, makes it easier to exercise these review rights. Under the current MM Act, any person can seek review of a decision of the Minister to impose a condition of Authorisation or to vary a condition of an Authorisation, within 28 days of the date of the decision,<sup>37</sup> but these provisions are futile in practice because there is no requirement (or standard practice) to publish Authorisation decisions.

However, we don’t think the merits review provisions in the EP Mining Bill go far enough. Merits review provisions in the draft EP Bill should be extended to allow for review of Mining Licences in the Tribunal even where the relevant mining activities are also subject to an Environmental Approval. Alternatively, the decision to grant an Environmental Approval should be subject to merits review under the EP Act – this is not presently the case.

There are some opportunities for public consultation during the EIA process which leads to an Environmental Approval. However, the opportunities for public comment depend on the tier or method of EIA adopted. At the end of the assessment process for an Environmental Approval, the NT

<sup>33</sup> EP Mining Bill, s 124ZQ (EP Act).

<sup>34</sup> EP Mining Bill, s 124ZZS (EP Act).

<sup>35</sup> EP Mining Bill, s 124ZZS (EP Act).

<sup>36</sup> EP Mining Bill, s 277 (EP Act).

<sup>37</sup> MM Act, ss. 65(1), (3). This is done before a review panel: s. 66.

EPA will prepare an Assessment Report and recommendations for the Environment Minister, and then the Environment Minister will decide whether to grant Environmental Approval and under what conditions. As noted above, there is no opportunity for public comment at this stage of the decision-making process.

The NT EPA has published a [Flowchart of the Environmental Impact Assessment process](#), which shows the different tiers of assessment and opportunities for public comment.

If the EP Act is operating in the way it is intended, then the operations with the most significant environmental impact should be subject to an Environmental Approval, as well as a Mining Licence. However, in those circumstances, there will be no merits review of the conditions in *either* the Mining Licence or the Environmental Approval. This is a perverse outcome which should be remedied.

Even if there is no merits review process for certain kinds of decisions, there may still be an opportunity to seek **judicial review** in the Northern Territory Supreme Court. The Court will consider whether the decision-maker has followed the correct legal process and met the applicable legal requirements. Unlike merits review, judicial review does not allow for arguments about whether the decision is good or bad or could be improved. Judicial review cases are complex and can be costly.

You can find out more about judicial review and merits review processes, generally, by reading EDO's Factsheet [Judicial Review and Merits Review in the NT](#).

### **3. Express requirements for mines in care and maintenance, but no limitation on how long mines can spend in care and maintenance**

An important feature of the EP Mining Bill is the proposal to have specific Mining Licence conditions applying to mines which are in care and maintenance.<sup>38</sup> However, we think that mines should be permitted to enter care and maintenance only in exceptional circumstances and there should be timeframes applied for how long a mine can remain in that state.

By way of illustration, there are three iron ore mines in the Territory which are in or have recently been in care and maintenance, being the Nathan River Resources (**NRR**) mine, the Roper Valley iron ore mine, and the Frances Creek iron ore mine. The NRR Mine re-opened in 2020 under a new owner and operated for barely a year before going into care and maintenance.<sup>39</sup> The Roper Valley iron ore mine has had numerous owners since it first operated in 2013, and similarly operated for only a short period

<sup>38</sup> EP Mining Bill, s 124Z (EP Act).

<sup>39</sup> Jon Daly, 'Mothballed NT iron ore mines reopen amid soaring demand for steel in China', *ABC News* (online, 7 December 2020) <<https://www.abc.net.au/news/rural/2020-12-07/nt-iron-ore-mines-reopen-to-meet-chinese-demand-for-steel/12950170>>; The Nathan River Resources website indicates that the mine went into care and maintenance in November 2021: see 'Overview, *Nathan River Resources* (Web Page) <<https://www.nathan-river.com/>>.

of time in 2021-22 under its latest owner before going into care and maintenance.<sup>40</sup> The Frances Creek mine went into care and maintenance in 2015, and briefly recommenced shipping iron ore in 2021.<sup>41</sup> The current status of this mine is unclear, but it is slated to restart production this year.<sup>42</sup> All three of these mines have had multiple operators and been replete with environmental issues, a further illustration of the ongoing issues with mining regulation in the Territory.<sup>43</sup>

The Territory has a long history of abandoned and legacy mines with significant and unremedied environmental impacts, with the costs left to be borne by the taxpayer, as well as ongoing environmental issues with its presently operating mines. EDO supports the inclusion of license conditions relating to mines in care and maintenance, however, we submit specific timeframes must be included in light of the above referenced examples.

#### **4. Strengthening of compliance and enforcement powers**

It is vital that compliance and enforcement powers directed towards ensuring mining companies do the right thing and comply with their licence conditions are strengthened. We are supportive of DEPWS assuming compliance and function powers in relation to mining activities and being able to draw upon a range of mechanisms within the EP Act.

Having said that, we have some concerns about performance management programs, and the fact that mining operators who are failing to comply with amended standard conditions cannot be subject to criminal or civil proceedings while a performance management program is in place.<sup>44</sup> The performance management program process could be extremely protracted, with numerous steps before the Minister can terminate a performance management program.<sup>45</sup> There should also be the potential for third party enforcement, for example by Aboriginal landowners and communities, where the regulator fails to take action (ie. to enforce rehabilitation).

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<sup>40</sup> Daniel Fitzgerald, 'NT government paid \$400,000 for stabilisation work on Roper Valley iron ore mine', *ABC News* (online, 25 January 2023) <<https://www.abc.net.au/news/2023-01-25/nt-government-paid-mining-erosion-work-roper-valley-iron-ore/101867794>>.

<sup>41</sup> Nickolas Zakharia, 'NT Bullion ships first iron ore from Frances Creek', *Australian Mining* (online, 24 June 2021) <<https://www.australianmining.com.au/nt-bullion-ships-first-iron-ore-from-frances-creek/>>.

<sup>42</sup> 'Developing Projects', *Resourcing the Territory* (Web Page) <<https://resourcingtheterritory.nt.gov.au/minerals/mines-and-projects/developing-projects>>.

<sup>43</sup> See, for example, Felicity James, 'NT government failures allowed environmentally damaging mining to continue 'unchecked'', *ABC News* (online, 4 May 2019) <<https://www.abc.net.au/news/2023-01-25/nt-government-paid-mining-erosion-work-roper-valley-iron-ore/101867794>>; Jano Gibson, 'Mining company Nathan River Resources fined \$340,000 for releasing contaminated wastewater into river in NT', *ABC News* (online, 19 October 2022) <<https://www.abc.net.au/news/2022-10-19/nathan-river-resources-fined-over-contaminated-mine-wastewater/101550016>>; Fitzgerald (n 40).

<sup>44</sup> EP Mining Bill, s 124ZY (EP Act).

<sup>45</sup> EP Mining Bill, s 124ZV (EP Act).

## Major shortcomings and opportunities for improvement

### **1. No mandatory requirements for life-of-mine closure plans and ongoing closure planning throughout the duration of mine life, including progressive rehabilitation**

One of the most significant issues with the EP Mining Bill is that it does not contain any mandatory requirement that mining operators have life-of-mine closure plans for their mining operations, to be provided at the inception of the operation and regularly updated and improved across all stages of a mine's life. Instead, there are only suggested conditions which the Minister *may* impose to manage environmental impacts, relating to closure planning, post-closure monitoring and rehabilitation. Indeed, the EP Mining Bill does not contain *any* mandatory conditions for mining operators.

Conditions around life-of-mine closure planning and the implementation of progressive rehabilitation should be mandatory. EDO's position is that all mining operations must have a long-term closure plan, and an associated security bond, provided up-front, which covers the full rehabilitation costs associated with the mining activities to be carried out. Operators should have investigated and made plans to address all environmental harms associated with their planned mining works and have the funds required to rehabilitate the site, from the outset. This reduces the risk of operators going broke and/or failing to appropriately prevent or mitigate environmental harm, leaving the Territory with ongoing financial and environmental liabilities.

### **2. Failure to clarify and meaningfully strengthen provisions around the calculation of mining security bonds**

Whilst greater detail has been included in the draft EP Mining Bill about the factors relevant to calculating mining security bonds, we understand there is currently no intention to change how mining securities are calculated in the Territory as a matter of practice. EDO has ongoing concerns about how security bonds are calculated. These include insufficient funds being allocated to appropriately rehabilitate mine sites, and a failure to calculate security bonds on a life of mine basis for all activities which have been approved and cause disturbance.

The EP Mining Bill says that the Environment Minister has to calculate the value of the security associated with each Mining Licence (noting that a security is a compulsory element of a licence), but does not include any mandatory factors for that calculation.

Moreover, whilst there is a requirement under the EP Mining Bill to publish security bond amounts, there is no requirement that the *methodology* adopted be published, making it very difficult to scrutinise security bond decisions. The legislation does not allow for review of security bonds by landowners and communities most affected by a particular mine. This is a huge missed opportunity, noting that ultimately the costs of any insufficient security bonds will be borne by the Territory and Territory taxpayers.

This approach to security bonds should be revisited, both in the legislation and as a matter of policy, and review rights should be included and strengthened.

### **3. Too much discretion given to the Environment Minister to determine licence conditions, including any standard or minimum conditions**

The draft EP Mining Bill gives the Environment Minister complete discretion to approve what standard conditions should be imposed on all mining operators holding environmental (mining) licences - whether universally or for different kinds of mining activities. There are no suggested or minimum standard licence conditions set out in the draft EP Bill.

The EP Mining Bill also doesn't include any requirement for proposed or draft standard conditions to go out to the public for consultation. We understand that the Territory Government intends to consult about the standard conditions once the draft Bills have been passed, but we say that this should happen *before* the legislation is introduced to Parliament, with legislated consultation timeframes, and consideration should be given to including standard conditions in the legislation. This would also allow more informed community input on the impacts of the legislation as whole prior to the legislation being passed.

In addition, we query whether it is appropriate that any mining operation be subject to these standard conditions *only*, as opposed to having some modified or tailored conditions. All mine sites should have conditions which are appropriately designed to address the environmental harms unique to the mine site.

### **4. Lack of acknowledgement or express involvement of Aboriginal Territorians in planning, setting objectives and review throughout the life of the mine**

EDO is deeply concerned by the failure of the Bills to properly recognise the role, responsibilities and the deep connection Aboriginal communities, traditional owners, and Aboriginal landowners<sup>46</sup> have with the Northern Territory environment. The vast majority of mining developments in the Territory occur on Aboriginal-owned land or land which is subject to the rights of native title holders. The Bills do not even refer to Aboriginal people and communities. In this regard, the Bills as currently framed fail to grasp the social, cultural and environmental impacts of mining projects on Aboriginal Territorians.

The failure to expressly involve Aboriginal Territorians in decision-making about mining or grant appropriate consultation and review rights is particularly unacceptable in relation to Aboriginal landowners who have recognised legal rights in relation to land. Approximately half of the land in the Northern Territory is under Aboriginal freehold, including 80% of its coastline. Much of the remainder of the Territory is subject to native title under the *Native Title Act 1992* (Cth), including land under

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<sup>46</sup> We use the term, 'Aboriginal landowner' in the context set out by the Northern and Central Land Councils in their joint March 2021 submission to *Regulation of mining activities – environmental regulatory reform*: [https://depws.nt.gov.au/\\_data/assets/pdf\\_file/0011/984944/clc-nlc-submission-01-mar-21-environmental-regulatory-reform.PDF](https://depws.nt.gov.au/_data/assets/pdf_file/0011/984944/clc-nlc-submission-01-mar-21-environmental-regulatory-reform.PDF). 'Aboriginal landowner' refers to Aboriginal people who have legal rights in relation to land, including Aboriginal Land Trusts holding Aboriginal land under ALRA and native title holders for areas subject to an approved determination of native title that native title exists and areas subject to registered claims.

pastoral leasehold. However, it is crucial that all traditional owners and Aboriginal communities are also consulted. For example, traditional owners must also be consulted where there is no determination of native title or registered native title claim in a particular area, and where native title rights may well be continuing and subject to *Native Title Act* protections. There is also presently no recognition of the need to provide materials in applicable First Languages or ensure materials are accessible for all remote Aboriginal Territorians.

There is a need for genuine consultation and co-design with Aboriginal Territorians to be embedded in the Bills. Traditional owners should be involved in setting closure objectives, reviewing mining operations and mine site rehabilitation and in setting and reviewing the conditions of Mining Licences. They are the most affected by toxic mine sites on Country and historically have been disempowered from these processes. EDO supports standards and requirements in national and state and territory laws that are co-designed by First Nations peoples and incorporate rights under the UN Declaration on the Rights of Indigenous Peoples, in particular, the requirement for free, prior, and informed consent.

The Bills also provide that not all Mining Licences are subject to merits review. Where it is available, standing is limited to those who are “directly affected” or who make a genuine and valid submission in the process. This is not acceptable in terms of the need to make submissions to then access review rights. There is a need for Aboriginal landowners to have standing for merits review of all decisions made under these reforms.

## **5. Failure to deal with cultural heritage assessment and sacred sites assessment as a pre-condition to granting mineral titles and Mining Licences**

In the wake of the Juukan Gorge Inquiry, the Government has missed an opportunity to strengthen protections for Aboriginal cultural heritage and sacred sites in the Northern Territory. Protection of sacred sites and Aboriginal cultural heritage should be considered at the forefront of any project and appropriate assessments and approvals should be completed and obtained as a pre-condition to the grant of a mineral title and a Mining Licence.

### **Other areas of comment and concern**

#### **1. Ensuring that the regulator is appropriately resourced**

The EP Mining Bill puts a range of powers to administer the licence scheme and take action for breaches in the hands of DEPWS. The ability to regulate mining properly and in a way that prevents and minimises environmental harm is dependent not only on the quality of the new laws but on the resources which DEPWS has to properly administer and enforce the law.

It is not clear at this stage how the new regime will be funded and resourced. There will be significant costs of not only reforming the system, but ongoing administrative costs including resourcing and training suitable operational staff.

One option is that the proposed licencing scheme charge administrative fees to licence holders – there is provision to do so in the EP Mining Bill but no suggested fees have been set. The amount of the administrative fee should be commensurate with the environmental risk and regulatory complexity of the mine. The proponent or license holder, not the NT, should carry the risk of non-performance.

## **2. Shortcomings in the consultation process**

EDO is concerned these centrepiece reforms have been released for a period of public consultation of only a month, with the intention to introduce the draft Bills in Parliament in the October sittings. This is far too short a timeframe for members of the public and key stakeholders to meaningfully engage in the content of the reforms, given the complexity and magnitude of the changes being proposed. The release of the exposure drafts is also well overdue – we understand that they have been in the pipeline for nearly two years – with a summary of stakeholder feedback published in December 2021.<sup>47</sup> There seems to be little value in rushing the process at this crucial juncture.

The short consultation timeframes are also especially concerning in circumstances where the vast majority of mining, and especially the largest and most environmentally risky and complex mines, are located on Aboriginal land of some description. We recommend that the consultation period be extended, proactive consultation be done in Aboriginal communities, and briefing materials available orally and in First Languages.

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*If you have any questions about the material contained in this Briefing Note or would like to find out more about how to engage in this important reform process, please do not hesitate to contact our office at [darwin@edo.org.au](mailto:darwin@edo.org.au).*

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<sup>47</sup> Department of Environment, Parks and Water Security, *Regulation of mining activities environmental regulatory reform: Feedback Summary Report* (September 2021) <[https://depws.nt.gov.au/\\_data/assets/pdf\\_file/0018/1070190/feedback-summary-report-regulation-mining-activities.pdf](https://depws.nt.gov.au/_data/assets/pdf_file/0018/1070190/feedback-summary-report-regulation-mining-activities.pdf)>