



Briefing Note: Mining regulation proposed for complete overhaul in the Territory

- The Northern Territory government is proposing to **completely overhaul how the law deals with the environmental impacts of mining** in the Territory. There are currently two Bills before the Territory Parliament, the [Environment Protection Legislation Amendment Bill 2023 \(EP Mining Bill\)](#) and the [Legacy Mines Remediation Bill 2023 \(Legacy Mines Bill\)](#). The Bills are scheduled for debate in the **28-30 November** Parliamentary sittings. Once passed, the key aspects of the scheme pertaining to Mining Licences and the Legacy Mines Bill will commence on dates fixed in the NT Government Gazette (likely during 2024), and if not commenced any earlier, on 16 October 2025.
- The Environmental Defenders Office (EDO) previously made submissions on Exposure Drafts for the Bills ([here](#) and [here](#)). **We noted that our current mining laws are not fit for purpose and welcomed this landmark step forward.** However, we found several critical shortcomings in the draft legislation which we recommended be addressed prior to the Bills being introduced to Parliament, to ensure better environmental outcomes and certainty for all stakeholders.
- Whilst the Bills contain some changes based on stakeholder feedback (see summaries [here](#) and [here](#)), the EDO remains concerned that **the reform process has been rushed and key issues have not been fully addressed in the Bills, especially in relation to mine closure and rehabilitation** and with respect to the management of legacy mine sites. The EDO is also concerned that **opportunities for public participation through merits review of mining licence decisions have been completely removed** and timeframes for comment on some licence applications have been shortened. **These reforms, whilst critical, should be revised and strengthened before the Bills can be passed.**
- The government intends to develop further regulations, policies and guidance materials in respect of the regulation of the mining industry, including with respect to:
 - The development of standard conditions and risk criteria for Mining Licences (slated for public consultation in early 2024);
 - The development of guidance material on mine closure, including rehabilitation, remediation and closure criteria (with involvement of stakeholders and public review);
 - The development of drafting instructions for regulations to the Legacy Mines Bill; and
 - A broader review of the *Mineral Titles Act 2010* (NT).
- Whilst we maintain certain matters should be resolved prior to debate in Parliament, we look forward to continuing to engage with government to strengthen the framework. We urge the government to leave sufficient time for comprehensive public consultation, expert review, and proactive engagement with stakeholders and affected communities on key issues.

Brief overview of the scheme

Below we provide a brief overview of each of the Bills and some key issues which we say need to be addressed to ensure the new scheme is fit for purpose. It is not intended to be exhaustive. For further details on changes between the Exposure Drafts and the Bills, please see separate **Appendix**.

The EP Mining Bill also contains further amendments which relate to the environmental impact assessment (**EIA**) and environmental approval process under the *Environment Protection Act 2019* (NT) (**EP Act**). These amendments are not dealt with further in this Briefing Note.

Note: You can find factsheets prepared by the relevant government Departments on the website “Have Your Say”, [here](#) and [here](#). These consider aspects of the Bills which are not dealt with below.

Environment Protection Legislation Amendment Bill 2023 (EP Mining 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 (**Minister**) and the Department of Environment, Parks and Water Security (**DEPWS**). It replaces the current system for regulating mining activities in the [Mining Management Act 2001 \(NT\)](#) (**MM Act**), which is administered by the Minister for Mining and Industry (**Mining Minister**) and the Department of Industry, Tourism and Trade (**DITT**). This achieves important regulatory separation, which the EDO supports.

Under the MM Act, operators are required to have Authorisations and approved Mining Management Plans (**MMPs**) in relation to their operations.¹ Existing mining operations have a period of up to 4 years to transition across to the new licence arrangements. Under the new scheme, all operators must hold an environmental (mining) licence (**Mining Licence**) if they carry out:

- Mining operations (mining for minerals)
- Extractive operations (mining for sand, gravel, peat etc.)
- Exploration activities, if exploring for minerals will cause “substantial disturbance”.

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, which will be declared by the Environment Minister. Tailored licences are available where risk criteria or standard conditions cannot be met. The idea is that the most complex and environmentally risky mine sites will hold a tailored licence. Standard conditions and risk criteria are not contained in the EP Mining Bill. We have been advised that the government will consult on these once the Bill is passed.

Legacy Mines Remediation Bill 2023 (Legacy Mines Bill)

The Legacy Mines Bill addresses the management of “legacy mine sites” and “legacy mine features” – mine sites and infrastructure which have been abandoned by their original operators. The Legacy Mines Bill, which is administered by DITT, allows the Minister for Mining and Industry to authorise people to carry out mining remediation activities on or in relation to legacy mine sites and features,

¹ In the case of exploration activities, this is required only where operations will cause “substantial disturbance”: MM Act, s. 35(2).

and grants powers to authorised people to enter land for such purposes. The Legacy Mines Bill also carries across and expands upon provisions from the MM Act in relation to the [Mining Remediation Fund \(Fund\)](#), being an existing Fund to deal with legacy mine issues in the Territory. Operators pay a levy equivalent to 1% of an operator's mining security bond annually into the Fund.

Remediation activities authorised by the Minister do not require Mining Licences, and the Bill allows for regulations to be created in future which could exempt other statutory approvals which would ordinarily be required for remediation activities, such as Environmental Approval under the EP Act, licences under the *Water Act 1992* (NT) (**Water Act**) or requirements under the [Northern Territory Aboriginal Sacred Sites Act 1989](#) (NT) (**Sacred Sites Act**). Regulations have not yet been drafted.

Outline of key concerns

Below is a non-exhaustive outline of concerns with the legislation which the EDO says should be addressed to ensure the new laws are fit-for-purpose. For further comparison of the key changes between the Exposure Drafts and the Bills before Parliament on these issues and their significance, see the tables contained in the **Appendix** to this Briefing Note.

Some key concerns with the EP Mining Bill are as follows:

- **Closure planning** - The new environmental licensing system does not require all operators for all licence categories to have a fully costed, life of mine closure plan prior to mining operations being authorised, which is regularly updated and approved as operations progress. The Bill only includes a requirement for a plan and costings of closure activities to be included as part of an application for a tailored condition licence for extractive and mining operations.² Thorough and ongoing closure planning, including requirements for progressive rehabilitation, align with best practice and guard against the substantial environmental and social harms which can occur as a result of failed or incomplete rehabilitation.³ Successful mine closure is rare - between 1981 and 2009, only 25% of mine closures in Australia were planned,⁴ and there are very few examples of mines being fully rehabilitated.⁵ It is especially worrying in that context that comprehensive closure planning is not mandated in the legislation but is left to Ministerial discretion for inclusion in licence conditions.
- **Calculation of security bonds** - The EP Mining Bill does not change the current approach to calculating security bonds in the Territory. Security bonds should be calculated based on detailed, regularly revised closure plans and be adequate to cover the full rehabilitation costs for all disturbances, including post-closure monitoring, maintenance, and reporting costs. Whilst the

² A rehabilitation plan is required for applications for tailored condition licences for exploration activities.

³ See, for example, Australian Government (September 2016), [Mine Closure: Leading Practice Sustainable Development Program for the Mining Industry](#).

⁴ Charles Roche and Simon Judd (2016), [Ground Truths: Taking Responsibility for Australia's Mining Legacies](#), Mineral Policy Institute, p 6.

⁵ Rod Campbell et al (April 2017), [The Dark Side of the boom: What we do and don't know about mines, closures and rehabilitation](#), the Australia Institute, p 10.

methodology for calculating security bonds must now be published under the Bill, it lacks mechanisms for independent third party review or for affected communities and Traditional Owners to call up bonds and enforce rehabilitation requirements. This should be rectified. The Territory has a legacy of inadequate security bonds with respect to complex, destructive mine sites. See, for example, [the failure of the McArthur River Mine security bond](#) to account for many hundreds of years of post-closure costs,⁶ the inadequate security bond for the [Frances Creek Mine](#), and a security bond which is [orders of magnitude too low](#) to deal with [ongoing environmental issues at Redbank Mine](#).

- **Standard conditions and risk criteria** - The EP Mining Bill gives too much discretion to the Environment Minister to determine what standard conditions should be imposed and what the risk criteria are for regulating different types of mining operations. There are no mandatory licence conditions for operators, nor any factors which the Minister is required to consider when determining what kinds of conditions are appropriate. It has been difficult to provide feedback on the likely effectiveness of the proposed laws in the absence of any draft conditions or risk criteria. Consultation on these conditions and criteria should occur *prior* to the legislation being debated in Parliament and key conditions should be set out in the legislation.
- **Transparency** - The proposed new scheme increases transparency by requiring Mining Licences, mining security bond amounts and reports submitted pursuant to the Bill and under licence conditions to be published. We applaud this step. However, the Bill does not go far enough during the transition period as there is no requirement to publish all existing Authorisations and MMPs during the up to four years it will take for existing operators to transition to the new scheme. Only more limited details must be published. A lack of transparency around existing mining operations is an ongoing concern which must be remedied fully within the new scheme.
- **Consultation** - Public consultation and review rights are inadequate, and concerningly, have been watered down or removed compared with the Exposure Draft. Public comment is only available on applications for modified and tailored condition licences where Environmental Approvals under the EP Act are also not required, and no comment is available at all on standard condition licences or the Minister's determination that a standard, rather than a modified or tailored licence is required. Where consultation requirements do exist, some of the timeframes for comment have been reduced as compared with those provided for in the Exposure Draft.
- **Review rights** - Worryingly, revisions to the Exposure Draft have also removed the ability to seek merits review for Mining Licence Decisions, which would be an effective, low-cost mechanism for affected communities and members of the public to scrutinise such decisions. This is coupled with an existing lack of merits review in respect of the Minister's decision to grant environmental

⁶ The Environmental Defenders Office presently acts for Jack Green, Josephine Davey and the Environment Centre Northern Territory in appeal proceedings relating to the lawfulness of a decision to reduce the security bond for the McArthur River Mine under the *Mining Management Act 2001* (NT). See [here](#) for more information.

approvals under the EP Act.⁷ Those who stand to be the most impacted by deficient licence and approval decisions have recourse only to judicial review in the Northern Territory Supreme Court, a process which is costly and difficult to access, and requires applicants to demonstrate specific categories of legal error.⁸

- **Rights of Aboriginal Territorians** - The EP Mining Bill fails to effectively recognise the rights and interests of Aboriginal Territorians on Country impacted by mining activities. The majority of mining activities in the Territory occur on Aboriginal land governed by the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**ALRA**) or on land which is subject to native title. Whilst the Bill imposes general duties on operators to provide information to affected communities on issues such as rehabilitation and closure and to consult with Aboriginal communities in a “culturally appropriate manner”, this does not go far enough. Traditional Owners and Aboriginal communities should be expressly involved in the setting of Licence Conditions, rehabilitation and closure plans and be able to call up mining security bonds and enforce rehabilitation requirements where needed.⁹ The very limited consultation rights and removal of merits review for Mining Licence decisions is also to the detriment of Traditional Owners and Aboriginal communities who bear the ongoing effects of destruction of Country and will continue to be saddled with liabilities when mine sites are relinquished.¹⁰
- **Cultural heritage** - The EDO maintains that relevant approvals under the Sacred Sites Act should be obtained and comprehensive cultural heritage assessment and preparation of a Cultural Heritage Management Plan be done, before any mining activities are approved. Licence conditions should then be required to give effect to cultural heritage protections. These issues should be at the forefront of the regulatory scheme and it is disappointing that legal protections have not been strengthened in the Bill. The [Juukan Gorge disaster](#) clearly demonstrated how cultural heritage can be destroyed when legal mechanisms are inadequate. In the Northern Territory, there remain ongoing concerns around potential damage to sacred sites and cultural heritage because of mining activities, clearly illustrated by the environmentally damaging [McArthur River Mine](#).¹¹

⁷ The consultation and review rights in each of these schemes and the inconsistencies are outlined in greater detail in our [submission](#), at pp 20-21. For information on Environmental Impact Assessment and Approval under the EP Act generally, see our [EDO Factsheet](#).

⁸ For more information about the difference between merits and judicial review, see this [EDO Factsheet](#).

⁹ For further discussion of these issues and other critiques, see also the [Joint Submission of the Central Land Council and Northern Land Council](#) in relation to the Exposure Drafts.

¹⁰ See, for example, the Rum Jungle Mine, which remains [an example of substantial rehabilitation failure](#). The site was not handed back to Traditional Owners in the early 1980s as part of a successful land claim in case they became liable for [environmental issues on site](#).

¹¹ See [Jack Green's Submission](#), with Dr Sean Kerins, to the Juukan Gorge inquiry. See also the NT Heritage Minister's decision in relation to [a purported agreement to destroy sacred sites by raising the height of the mine's waste rock dump](#), and concerns around the protection of an [archeologically significant stone quarry](#).

- **Care and maintenance** - The EP Mining Bill also misses a crucial opportunity to more effectively deal with mines which are in care and maintenance, being mines that have temporarily ceased operating. As of October 2023, there were as many as 15 mines in care and maintenance in the Territory.¹² Inadequate regulation exacerbates the risk that mines will ultimately be abandoned with significant environmental impacts and financial liabilities for the government, taxpayers and local communities. The Bill should require operators to submit a detailed care and maintenance plan for approval by the Minister when any mine proposes to enter care and maintenance, which is publicly available and regularly updated by the operator. This should be a legislative requirement and not left to policy guidance. Environmental issues should be actively managed, and there should be procedures to require closure and rehabilitation if necessary, rather than allowing mines to remain in care and maintenance indefinitely.

Some key concerns with the Legacy Mines Bill are as follows:

- **Approvals and safeguards for remediation activities** – The Legacy Mines Bill does not contain procedures or safeguards around the Minister’s power to authorise persons to carry out remediation activities on site, such as fit and proper person tests for authorised persons or companies, any express requirements or conditions to which remediation activities will be subject to under the Bill, or any public notification, consultation and review requirements for remediation authorisations. Remediation activities are also not subject to Mining Licences. More comprehensive accountability mechanisms should be included in the legislation. This is especially pertinent in light of examples in the Territory where remediation and rehabilitation has been mismanaged or delayed for complex mine sites, such as Redbank Mine and [Rum Jungle](#), and where concerns have been raised around the transparency of actions taken and the lack of involvement by Traditional Owners.
- **Role of other statutory approvals** - The Legacy Mines Bill includes provisions allowing the Minister to authorise people to carry out remediation works without obtaining certain statutory approvals which would ordinarily apply, if those approvals are set out in the regulations. Unlike the EP Mining Bill, which includes changes to the *Environment Protection Regulations 2020* (NT), the Legacy Mines Bill does not introduce proposed regulations for debate in Parliament – the drafting of the regulations has been left for a later date. Possible statutory approvals which could be switched off in future include requirements for environmental impact assessment and approval under the EP Act, requirements under the Sacred Sites Act, and water licensing requirements and waste discharge licence requirements under the *Water Act 1992* (NT). Switching off these approvals would remove a crucial mechanism by which remediation processes can be scrutinised by those with interests in land including Traditional Owners and affected Aboriginal communities, and by the public. This power should be removed from the Legacy Mines Bill.
- **Consultation** - The Legacy Mines Bill includes duties for legacy mines officers to consult with owners and occupiers of land containing legacy mine sites and features and of land affected by

¹² See the [Joint Submission of the Central Land Council and Northern Land Council](#), p 18, for a list of examples.

remediation activities. However, these duties are insufficient and there are no processes or timeframes in the legislation for consultation. Authorised officers can still enter land on 10 days business notice without consent, and the contents of a remediation notice to owners or occupiers is not specified sufficiently in the Bill. Consent should be required from landowners and occupiers, and notification and consultation processes should be extended to all persons who may have interests in land, regardless of tenure, including Traditional Owners and affected communities.

- **Rights and interests of Aboriginal Territorians** - The Legacy Mines Bill does not go far enough to recognise and respect Aboriginal ownership and custodianship over land, including because of the lack of clear consultation and review processes for Traditional Owners and Aboriginal communities, the lack of consent required from owners and occupiers for entry to land and the ability of the government in future to abrogate statutory approval processes including sacred sites protections. Without appropriate regulation and involvement in remediation processes, Traditional Owners and Aboriginal communities will continue to be saddled with the impacts of unsuccessful or poorly managed remediation works on Country.

If you have any questions about the material in this Briefing Note or the attached Appendix, please contact our office (darwin@edo.org.au).