

Appendix: Mining regulation reform - comparison between Exposure Draft and Bills

Environment Protection Legislation Amendment Bill 2023 (EP Mining Bill)

What did we say about the Exposure Draft?	Have our concerns been met?	What do we say should happen?
Closure, Rehabilitation and Mining Security Bonds		
<p>Mining operators should be required to have a fully costed life of mine closure plan from the beginning of mining operations, which is regularly updated and approved, with clearly defined closure criteria. The Exposure Draft did not mandate closure plans for any category of Mining License.</p> <p>This is important because best practice mining regulation requires closure planning to commence and closure objectives and land end uses to be determined as early as possible in a mining project, with continual refinement throughout the life of a mine. This serves to guard against the substantial environmental and social harms which can occur where mines close early and where mine rehabilitation fails or is incomplete.</p> <p>Note: The current <i>Mining Management Act 2001</i> (NT) requires all MMPs to include a “plan and costing of closure activities” for approval by the Minister along with the issuing of an Authorisation for mining activities (see s 40(2)(g)). This has not been included in the new scheme for all licence categories.</p>	<p>Changes to the Bill only partially address our concerns. The Bill now requires applications for tailored condition licences for extractive and mining operations to include “a closure plan for the mining site and a costing of proposed closure activities” and a rehabilitation plan in respect of exploration activities (s 124ZE(f)-(g)).</p> <p>The Bill otherwise provides that licence conditions <i>may</i> be imposed which require an operator to undertake closure planning at all stages of a mine’s life and implement plans which maximise progressive rehabilitation in areas of a mine site where mining activity is to cease (s 124X).</p>	<p>Fully costed life of mine closure plans should be required for all categories of Mining Licences and mandated in the legislation itself. There should also be requirements to regularly update those plans throughout the lifetime of an operation under Mining Licence conditions, with input from Traditional Owners and affected Aboriginal communities and subject to expert review.</p> <p>We understand that the Territory government will consult about standard licence conditions in early 2024. If closure planning requirements are not mandated in the Bill, as we say should be the case, then rigorous closure and rehabilitation plan requirements must be included as standard licence conditions.</p>

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<p>There should be clearly defined and approved closure criteria in closure plans, which are subject to independent expert review and input from Traditional Owners and Aboriginal communities. Successful rehabilitation should be determined objectively by reference to agreed upon closure criteria and closure plan outcomes.</p> <p>This is important because it means that rehabilitation goals and outcomes are determined in consultation with those who will be affected and meet objective standards, rather than being dependent on the subjective views of a Minister or mining operator.</p>	<p>The Bill now allows operators to apply for a “mining closure certificate” (ss 214A-214E), with flow-on effects for mining bond refunds. The effect of such a certificate is that the mining operator ceases to be liable for any future environmental impact and the mining licence stops operating. Any unused security amount is refundable (s 132F(1)(a)).</p> <p>The Minister may issue such a certificate if satisfied the following have been completed under the Act and the licence:</p> <ul style="list-style-type: none"> • rehabilitation and remediation requirements required under the licence; • post-closure, monitoring, management and reporting requirements under the licence; • closure requirements of the licence. <p>The Minister may determine, by <i>Gazette</i> notice, <u>criteria</u> to be met by a mining operator before a <u>mining closure certificate</u> can be issued for a mining site, or class of mine site, although the Minister may issue a certificate without any such criteria being declared.</p> <p>This only partially addresses our concerns. It is not mandatory to prepare a closure plan or set closure criteria for every operation. It is also not clear how this process interacts with provisions allowing a</p>	<p>The issue of a mine closure certificate, measured against objective closure criteria developed for the mine site, must be the sole or mandatory process for site relinquishment and the refund of any unused mining security amount.</p>

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	<p>mining operator to apply to the Minister for the cancellation of a mining licence (see ss 124ZZH-124ZZM), a process which is partially referable to the Minister’s satisfaction that remediation and rehabilitation actions have been undertaken but does not reference closure criteria.</p>	
<p>Mining Licences should have requirements for progressive rehabilitation, especially for active mines and extractive operations. This was not adequately dealt with under the Exposure Draft.</p> <p>This is important because progressive mine rehabilitation reduces the overall footprint of mining operations, allows rehabilitation strategies and closure options to be trialed early and reduces the risk of ongoing environmental and financial liabilities associated with early closure or rehabilitation failure.</p>	<p>This has not been addressed in changes to the Bill. Consistent with the Exposure Draft, the Bill provides the licence conditions <i>may</i> be imposed which require an operator to undertake closure planning at all stages of a mine’s life and implement plans which maximise progressive rehabilitation in areas of a mine site where mining activity is to cease (s 124X).</p>	<p>We consider that conditions relating to progressive rehabilitation should be mandatory.</p> <p>Again, such requirements must be included in standard licence conditions if they are not included in the legislation itself.</p>
<p>We said that mining security bonds should be calculated based on mandatory factors which ensure bonds are adequate to cover the full costs of rehabilitation of all disturbances across the life of the mine, including post-closure monitoring, maintenance, and reporting. The methodology for calculating security bonds should be transparent and reviewable.</p> <p>This is important because this acts as an insurance policy to prevent the Territory government, and</p>	<p>There have been some, limited, changes to security bond provisions in the Bill. Importantly, the Minister is now required to determine and publish the methodology for calculating the amount or value of the mining security to be provided (s 132C(1)). Provisions allowing the formula for calculating the security amount to be included as a condition of a mining licence have been removed.</p> <p>However, overall there has been no change to the approach to security bonds – the factors to be taken</p>	<p>The Bill should ensure that security bonds are calculated based on detailed, regularly revised closure plans and are adequate to cover the full rehabilitation costs for all disturbances, including post-closure monitoring, maintenance, and reporting costs.</p> <p>Bonds should be calculated upfront on the basis of planned disturbances across the life of the mine, rather than in</p>

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<p>ultimately Territorians, from footing the bill for rehabilitating environmentally destructive mine sites. Adequate security bonds are required to protect local communities from being saddled by ongoing environmental effects of mining which can persist long after mining operations have ceased and the operator has walked away.</p>	<p>into account remain discretionary (s 132C(2)) and problematically, allow for the calculation of the security bond in stages.</p>	<p>stages, and then updated and revised as necessary.</p> <p>Traditional Owners and affected communities should be able to call up security bonds and enforce rehabilitation requirements where necessary.</p>
<p>Transparency</p>		
<p>We said that all existing Authorisations and Mining Management Plans for mining operations under the MM Act should be made publicly available. The Exposure Draft treated these documents as ‘deemed’ Mining Licences, but it was not clear whether these documents needed to be published on the public register online. In contrast, all Mining Licences issued under the new laws are to be published online along with any documents to be submitted under those Licences.</p> <p>This is important because the public should have access to information about how mining operations are regulated, so that operators and the government can be kept accountable. One of the biggest issues with the current laws is a lack of transparency, with no mandatory publication requirements for Authorisations and MMPs. Those documents contain important conditions about how mine sites are managed including to mitigate or address environmental harm.</p>	<p>The Bill now contains express publication provisions around deemed mining licences. It requires the Minister to publish (s 310):</p> <ul style="list-style-type: none"> (a) Details of the mining site (b) The name of the mining operator (c) A summary of the mining activities authorised under the deemed mining licence (unless the full MMP is published, per the below) (d) The security bond amount. <p>If an MMP was already published before the new laws commence, the Minister must publish it or publish information about where the MMP can be viewed. However, if the MMP was not published, the Minister may publish it or direct a mining operator to publish it at their discretion.</p> <p>This only partially addresses our concerns.</p>	<p>The Bill should require all Authorisations and MMPs for mining operations to be published, including those which were not public as at the date the new laws commence.</p>

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Public Consultation and Review Rights		
<p>We said that public consultation should be available on all categories of Mining Licence and regardless of whether Environmental Approvals under the <i>Environment Protection Act 2019</i> (NT) (EP Act) are required or granted for the operation. The Exposure Draft only provided for public consultation on modified and tailored Mining Licences and only where Environmental Approval was not additionally required. Public consultation should also be available on applications for standard condition licences and determinations of what kind of licence is most appropriate, rather than relying on operators to self-select on what kind of licence to apply for.</p> <p>This is important because the potential for public scrutiny promotes better decision-making, accountability and public confidence that the law will be upheld. Access to justice underpins the rule of law and our democracy. Minerals are also a public resource, owned by the Crown, to be managed on behalf of citizens. It is appropriate for there to be public input on how mining is regulated.</p>	<p>This has not been addressed in changes to the Exposure Draft. Consultation is only available on modified and tailored condition licences where Environmental Approval is not required.</p> <p>Public consultation timeframes have also been reduced from a minimum of 30 business dates from the date of the notice to shorter timeframes, other than in relation to consultation on tailored condition licences for mining operations. These timeframes are wholly insufficient. The minimum comment periods set out below (cl 233T(5)):</p> <p>For a modified condition licence:</p> <ul style="list-style-type: none"> • Exploration activity – 15 business days • Extractive operations – 15 business days • Mining operations – 25 business days <p>For a tailored condition licence:</p> <ul style="list-style-type: none"> • Exploration activity – 25 business days • Extractive operations – 25 business days • Mining operations – 30 business days 	<p>There should be public consultation on all applications for Mining Licences and changes to licence conditions, whether for a standard, modified or tailored condition licence. This should be in place regardless of whether an Environmental Approval under the EP is required or is in place.</p> <p>The minimum timeframes for public consultation should not be shortened.</p>

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<p>We said that merits review should be available for all decisions relating to Mining Licences and this should be available to any member of the public (known as ‘open standing’). The Exposure Draft only allowed review for decisions to grant modified and tailored Mining Licences where Environmental Approval was not additionally required, and limited public review rights to those directly affected by a decision and those who had made submissions earlier in the process in relation to the decision to grant a licence.</p> <p>This is important for the reasons set out above with respect to public consultation rights.</p>	<p>Concerningly, provisions for merits review have been entirely removed from the EP Mining Bill. This means that members of the public and affected communities cannot seek review of Mining Licences in a Tribunal and argue that a better decision should have been made.</p> <p>Instead, Mining Licences can only be challenged by way of a judicial review process in the Northern Territory Supreme Court. This requires the person bringing the legal challenge to show they have a special interest in the licence (beyond that of a general member of the public) and must be brought based on specific, legal errors.</p>	<p>There should be open standing merits review available for all decisions relating to Mining Licences, and irrespective of whether Environmental Approvals under the EP Act have been granted.</p>
Rights of Aboriginal Territorians		
<p>We said that there should be extensive involvement of Traditional Owners and Aboriginal communities in Mining Licence decisions, including in the setting of licence conditions, closure criteria and rehabilitation outcomes, as well as clear pathways for review of decisions.</p> <p>This is important because most mining occurs on Aboriginal Land under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) (ALRA) or land which is subject to native title, although such involvement should occur irrespective of formal land rights status. Mining activities have the potential to cause long-term,</p>	<p>The EP Mining Bill now imposes general duties on mining operators when applying for Mining Licences and carrying out mining activities to, amongst other things (s 124S):</p> <ul style="list-style-type: none"> • Provide communities that may be affected with “information and opportunities for consultation” to assist understanding of mining impacts, including proposals for remediation, rehabilitation, closure and final land use; and • Consult with affected communities, including Aboriginal communities, in a “culturally appropriate manner”. 	<p>Whilst consultation duties are a step forward, this does not go far enough. There should be clear statutory consultation processes and review mechanisms for Traditional Owners and affected communities in respect of key decisions. This includes statutory involvement in setting closure criteria and review of closure and rehabilitation plans. This also extends to expansive consultation rights on Mining Licence applications and conditions and to merits review of licence decisions.</p>

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irreversible harm to Country, especially without proper regulation, and the Territory has a legacy of such destruction occurring.		
Cultural heritage		
<p>Prior to granting of a mineral title and any Mining Licence or Environmental Approval for mining activities, there should be:</p> <ul style="list-style-type: none"> Investigation, mapping and approvals pertaining to the protection of sacred sites under the Sacred Sites Act; and Comprehensive cultural heritage assessment and the preparation of a Cultural Heritage Management Plan, with involvement from Traditional Owners. <p>This is important because mining operations can, and do, have significant impacts on sacred sites and other forms of cultural heritage, and there is a legacy of destruction occurring where legal protections are inadequate and where Traditional Owners have not been involved and their concerns respected and upheld.</p>	<p>This has not been addressed. The Bill now allows for conditions to be imposed under a mining licence to manage the potential social and cultural impacts of the mining activity, but only where such conditions could not be imposed under other licences, permits or authorities under another enactment (s 124Y) It does not mandate these processes as a pre-condition to approval for mining activities.</p>	<p>Investigation and mapping of sacred sites by Traditional Owners and approvals under the <i>Sacred Sites Act</i> must be required as a pre-condition to the granting of mineral titles, Mining Licences and Environmental Approvals for mining activities.</p> <p>Comprehensive cultural heritage assessment and the preparation of a Cultural Heritage Management Plan, with involvement from Traditional Owners, must be required as a pre-condition to the granting of mineral titles, Mining Licences and Environmental Approvals for mining activities.</p>

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Care and Maintenance		
<p>Mining Licences should include extensive and mandatory conditions to deal with mines in care and maintenance (mines which have temporarily ceased operations) including the submission and approval of care and maintenance plans and conditions to deal with remediation and rehabilitation. Operators should be required to notify the public if they intend to enter care and maintenance and seek approval, and there should be limitations on the amount of time mines can spend in care and maintenance.</p> <p>This is important because mines can use care and maintenance periods to effectively avoid closure and rehabilitation requirements. Lengthy periods of care and maintenance also draw down a company's financial reserve, and increase the risk that a company will collapse, leaving mine sites to be on-sold to other operators, or mine sites being abandoned entirely.</p>	<p>These concerns have not been addressed by changes to the Exposure Draft.</p> <p>The Bill obliges mining operators, during a care and maintenance period, to maintain structures and facilities and implement an appropriate program of maintenance to ensure structures and facilities do not cause environmental impacts (s 124G). This sits alongside a general duty to prevent or minimise environmental impacts.</p>	<p>There should be provisions which mandate the submission and approval of care and maintenance plans, which are publicly available and regularly updated.</p> <p>The legislation should also impose limitations around the time periods in which operators can remain in care and maintenance, and allow the Minister to require an operator to close and rehabilitate a site or transfer to an appropriate new operator if care and maintenance periods are prolonged or not genuine.</p>

Legacy Mines Remediation Bill 2023

What did we say about the Exposure Draft?	Have our concerns been met?	What do we say should happen?
Approvals and safeguards for remediation activities		
<p>The Legacy Mines Bill should include requirements and safeguards around the authorisation of persons to carry out remediation works, including a fit and proper person test, appropriate standards, licensing and approval processes. There should be specified public notification, consultation and review rights in relation to remediation activities.</p> <p>The Legacy Mines Bill should not include a provision allowing the Minister to authorise someone to carry out remediation activities without obtaining a statutory approval, if prescribed in regulation, which would ordinarily be applicable to those activities.</p> <p>This is important because remediation and rehabilitation processes themselves can have environmental impacts as well as significant impacts upon sacred sites and cultural heritage. Such processes must be carefully managed and subject to public oversight, especially for highly complex sites, and given the potentially significant expenditure of public money involved.</p>	<p>These concerns have not been addressed in the Bill.</p> <p>The Northern Territory government points to existing procurement requirements and Departmental expertise in managing remediation operations, as well as other statutory approval processes. General duties imposed on legacy mines officers to consult with owners and occupiers which have now been included (see further below).</p> <p>We remain concerned that regulations could be enacted (s 20) that switch off approval mechanisms under the EP Act, for Environmental Approvals, the Sacred Sites Act and the Water Act, and along with them, any public consultation and oversight or involvement of Traditional Owners and communities as provided for in these other statutory provisions.</p>	<p>There should be standards or factors which the Minister for Mining and Industry (Mining Minister) must consider when making decisions to authorise persons to carry out works. Remediation activities should be subject to Mining Licences and a fit and proper person test for authorised operators.</p> <p>Provisions allowing for other statutory approvals to be “switched off” should be removed.</p> <p>More comprehensive consultation and review requirements should be built into the legislation. General duties imposed on legacy mines officers should extend to all persons with affected interests and the public at large, and should specify clear consultation processes, timeframes or review rights.</p>

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Consultation and notification		
<p>The Legacy Mines Bill should include strengthened notification processes for landowners around remediation works, which recognise a variety of land tenure types and interests, with dispute resolution and complaint mechanisms.</p> <p>The definition of “owner” should be strengthened to recognise a variety of tenure types and ownership and there should be express requirements in the Bill about the matters which must be set out in the notice to carry out remediation works. Entry should not be allowed to occur without consent and disclosure of the scope of works.</p> <p>This is important because there should be checks and balances on the carrying out of remediation works, and those most affected should be entitled to comprehensive information about the proposed works and the ability to consent to those works. This should extend to those with interests in the land that do not amount to exclusive possession.</p>	<p>The Bill now specifies that the functions of a legacy mines officer include to consult with owners or occupiers of the following (s 25(b)):</p> <ul style="list-style-type: none"> • Land that is a legacy mine site and any premises on the land • Land or premises that is, or on which there is, a legacy mine feature • Land or premises affected by a legacy mine site or legacy mine feature or remediation activity that is being or may be carried out. <p>The Mining Remediation Fund may also now be used for expenses involved in consulting with those that may be “affected by” legacy mine sites, legacy mine features or remediation activities (s 9)(3)(c)).</p>	<p>There should be clear notification processes and consultation requirements, which extend beyond landowners to all persons who may have affected interests, irrespective of tenure type. Entry to land and works performed should require the express consent of owners and occupiers.</p>
Rights and interests of Aboriginal Territorians		
<p>There should be greater recognition of and respect for Aboriginal ownership and custodianship over land. There should be free, prior and informed consent for entry to land and the carrying out of remediation works on Country. Remediation works must be developed and</p>	<p>These concerns have only been partially addressed. Provisions allowing authorised persons to enter land or premises without the relevant permits under the <i>Aboriginal Land Act</i> have been removed, although a legacy mines officer may still enter land despite not</p>	<p>The legislation should facilitate free, prior and informed consent for entry to land and the carrying out of remediation works on Country.</p>

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<p>co-designed with Traditional Owners (regardless of land tenure type).</p> <p>This is important because, without appropriate regulation and involvement, Traditional Owners and Aboriginal communities will continue to be saddled with the impacts of unsuccessful or poorly managed remediation works on Country. Ownership and custodianship of land must be respected.</p>	<p>holding a relevant permit, simply with prior written notice (s 26).</p> <p>More broadly, the Bill retains provisions for authorised persons to enter lands with at least 10 business days written notice to the owner or occupier (ss 16(3)(b). There are also no express provisions accounting for consultation with, and involvement of, Traditional Owners and Aboriginal communities with the design and implementation of remediation works.</p>	<p>As above, there should be appropriate and transparent regulation of remediation operations, clear consultation rights and review mechanisms for Aboriginal Territorians.</p>
<p>Transparency and management of the Mining Remediation Fund</p>		
<p>There should be increased transparency around the operation of the Legacy Mines Bill, including:</p> <ul style="list-style-type: none"> • An expansion in the requirement to publish expenditure of funds to ensure all activities under the Mining Remediation Fund are reported on; and • A public register of all legacy mine sites and features. <p>This is important because expenditure from the Mining Remediation Fund should be subject to appropriate oversight and scrutiny, to ensure money is spent effectively to address ongoing mining legacies and protect and improve the environment for future generations.</p>	<p>This has been partially addressed. The Chief Executive Officer of DITT must now prepare an annual statement each year on the operation of the Fund, including the purposes for which money has been paid out and activities carried out during the Fund (s 10).</p> <p>The Bill continues to distinguish between reserved mine sites (which must be included) and legacy mine features and non-reserved legacy mine sites (which may be included) on the public register (s 15). Reserved legacy mine sites are sites declared in the <i>Gazette</i> over which further mineral title applications cannot be made. (s 14) This publication distinction prevents proper public oversight of the scale and extent of legacy mining impacts in the Territory.</p>	<p>There should be a free and publicly accessible online register detailing the location of all legacy mine sites and features across the Territory and the status of authorised remediation works.</p>