MINERALS COUNCIL OF AUSTRALIA NT DIVISION

SUBMISSION ON THE NORTHERN TERRITORY GOVERNMENT'S DRAFT ENVIRONMENT PROTECTION BILL AND REGULATIONS

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4 DECEMBER 2018

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FOREWORD

The MCA NT appreciates the opportunity to comment on the draft Environment Protection Bill and Regulations. The MCA NT also acknowledges the work and effort over the past 2-3 years by government representatives, particularly from the Department of Environment and Natural Resources (DENR) to actively engage with industry, and the consultation process that has been undertaken.

The MCA NT, like many across the Territory, is pleased to see the achievement of this milestone: release of the Draft Bill and Regulations. The MCA NT recognises that this has been an extensive task undertaken by the government, and an exhausting one as well, for all involved.

This process, culminating in drafting and release of the Environment Protection Bill and Regulations, has led to a somewhat mixed bag of outcomes, regarding the positioning and development of the Northern Territory's minerals sector. The MCA NT understands that this process was to improve as well as future-proof the assessment and approvals process of the Northern Territory Government, but this cannot come at the disproportionate cost of economic, social and regional development and benefit.

As expressed in many submissions and consultations in the past, investment capital is mobile and will flow to the path of least resistance in terms of regulatory efficiency and predictability. The MCA NT supports environmental impact assessment (EIA) and approvals processes that ensure future development is environmentally sustainable; however, these processes must be both efficient and inclusive. Both the proponent and community must have confidence in the efficiency and effectiveness of the process, as this is what allows companies to have a social licence within the communities in which they operate. Assessments and decisions must be risk- and evidence-based, or the extent of regulation will far exceed what is appropriate in terms of risks to the environment and will not be cost-effective.

Environmental objectives, triggers, thresholds and approval conditions that exceed what is justified on the basis of environmental risk will stymie further development of this sector, as potential investors will invest elsewhere and this will directly disadvantage the Northern Territory economy and threaten the government's aspirations to kick-start and maintain population growth.

The approvals system needs to be well-resourced with appropriate levels of experienced and competent staff, trained and knowledgeable in the specific matters upon which they are commenting. The proposed removal of project development approvals from the Mines Directorate in the Department of Primary Industry and Resources (DPIR) to the Environment Minister and DENR has its own risk profile; however, it can be successful only if adequate and appropriate resourcing occurs.

For the Environment Minister and Resources Ministers to share the roles of consent authorities, supported by sound advice provided by their staff, the government must commit to adequately resourcing their departments. Where additional expertise and guidance are required, project control groups or other coordinating body may need to be put in place to capture that expertise and ensure that the transitional path from current processes to those in the new regulatory framework is efficient.

The MCA NT does not support adopting a cost-recovery approach to fund the government in carrying out its legislative responsibilities and considers that the implementation of the new Environment Protection Act should instead be properly resourced from the government's existing revenue base.

Proponents should not have to pay for government officers to do the jobs that are paid for by taxes. If the government needs to hire consultants or outsource particular components of its responsibilities because it either does not have internal expertise or adequate staffing levels, then this reflects budgeting decisions or a resourcing model on the part of a department that should not have to be financed by the minerals sector. The government needs the private sector investment of the minerals industry to underpin aspirations in the Economic Development Framework for sustainable economic recovery in the Territory.

A significant concern of the MCA NT is that the new Environmental Approval has the potential to become a veto against future development. The targeting of the minerals sector in Stage 2 development of the Act (when there are other industries that have potential for significant adverse environmental impacts) has generated much concern regarding the future viability of the sector in the Northern Territory. Government leaders have acknowledged that mining projects and the industries that support them are the foundation upon which rural and regional development can occur to the benefit of all Territorians. While the protection of the environment remains a priority, the Territory's regulatory framework needs to be balanced to allow economic stimulation through investment attraction and the jobs and population growth that flow from this.

The MCA NT believes that the Territory's existing environmental regulatory framework could have met all requirements for efficient and effective EIA and approvals processes and public confidence, had provisions been rigorously implemented by experienced and highly competent officers in the existing regulatory agencies (primarily DPIR and DENR).

Assuming that the proposed changes are based on sound principles and scientific evidence, then they MUST be applied to ALL industries. There are many examples in the proposed changes that relate to mining only and this erodes the confidence of the industry and the community in this process.

The MCA NT and its members harbour concerns that the new framework has a high risk of failure, because development of the Bill and Regulations has been rushed to meet deadlines of a patently inadequate timeline. The result of this might be even more protracted and costly processes (rather than the desired streamlining) without material environmental benefit.

For this reason, the MCA NT recommends that the draft Bill and Regulations not be tabled and instead the government focuses on improving the current regulatory system, including not creating new and untested provisions and instead looking for models (preferably elsewhere in Australia) that appear to be working well, e.g. the definition and use of environmental objectives in Western Australia. The government should not be developing principles or processes that are not already tried, tested and shown to be effective and efficient elsewhere, unless there are specific or unique circumstances in the Territory that can be adequately described and an assessment of why existing Australian regulations should not be applied. This inter-jurisdictional comparison should be done for each of the major components in the Draft Bill.

If the government is committed to tabling this legislation in the near future, then it should stop the current reform activities and develop a more realistic timeline during which consultation with industry and other stakeholders can continue and be used to develop essential details about triggers, objectives and other matters that are presently largely conceptual and without adequate information on what form they will take or how they will be implemented.

It should also complete and publish results of a regulatory impact statement (RIS), to demonstrate how a cost-benefit analysis indicates that the proposed reforms are a cost-effective strategy for resolving deficiencies in the current regulatory framework.

If a proponent had put the current level of detail about the Draft Bill and Regulations in EIA documentation and asked the NT EPA to do a thorough and sound assessment of their merits and likely success at meeting the government's objectives of environmental regulatory reform, then there is no doubt that the NT EPA would 'stop the clock' and require the proponent to provide adequate information for the NT EPA to be able to conduct a sound assessment to underpin its conclusions and recommendations to grant approval or otherwise.

The MCA NT is asking the government to be consistent in its requirement that decision-making be based on adequate information, if the government is intent on adopting the Draft Bill and Regulations that have been released for public and industry review.

If the Bill and Regulations are passed, it will be incumbent on the government to ensure that their provisions are competently and rigorously implemented (by both government and proponents) and subject to regular performance reviews to ensure that all objectives are being efficiently and effectively met.

EXECUTIVE SUMMARY

The Minerals Council of Australia Northern Territory Division (MCA NT) welcomes the opportunity to provide a submission to the Northern Territory Department of Environment and Natural Resources (DENR) on its Draft Environment Protection Bill and Regulations. The MCA NT acknowledges the commitment of DENR over the past two years to engage with the organisation during development of this legislation; however, feedback to DENR has often not resulted in responses regarding what government has done with this, in particular, whether feedback has been taken on board and used in development or revision of policy. One welcome exception was recent discussion on the Bill's original provisions to allow third party appeals on decisions in the environmental impact assessment (EIA) process, which was mutually acknowledged as a serious weakness in the Bill and thankfully amended by the government during the current consultation period.

The Australian minerals industry supports environmental regulation that is both efficient in its operation and effective in achieving desired outcomes. Both community confidence and certainty for business are critical benchmarks for effective regulation.

The minerals sector is global and highly competitive in terms of investment attraction, both within Australia (between states) and internationally. Investment capital is highly mobile and will be directed to jurisdictions with efficient, transparent, consistent and sound regulatory frameworks, which unfortunately has not been the case for the Territory's environmental regulatory system.

In this submission, the MCA NT does not seek to compromise environmental standards or safeguards that are integral to best practice EIA and approval processes. Instead, it seeks to promote development and adoption by the federal and jurisdictional governments of more streamlined and risk- and evidence-based processes that achieve effective environmental outcomes through the removal of costly duplication and unnecessary regulatory burden.

A. Components of the draft Bill that are welcomed by the MCA NT

- **Restricting *appeals to those with* bona fide *standing (MCA NT supports, with two exceptions)***

The MCA NT strongly supports the amended position of government that only judicial reviews will be accepted on decisions relating to EIA and approvals and that only those directly affected by a decision (i.e. proponents and land managers/owners potentially or likely to be impacted by a proposed development) or those having made valid and genuine submission demonstrating adequate grounds for concern about potential environmental impacts, should have the right of appeal.

The MCA NT does not support granting standing merely on the basis of having made a submission on a matter relevant to ministerial or departmental decisions within the EIA or approvals processes. Such a broad definition could potentially allow appeals from those who have not made a compelling case to justify an appeal and therefore would be raising objections from purely an ideological basis, as is done by anti-development lobby groups. Restricting access to judicial review will reduce the opportunity for groundless legal challenges to delay development projects that have met all regulatory requirements, without compromising the ability of genuinely interested parties to pursue their legitimate interests.

- **Explicit time *limits for regulators to process and complete their responsibilities under the Act*, with one exception**

The MCA NT welcomes and endorses (with one exception) the inclusion of time limits for the following, because they are mechanisms for streamlining government decisions, approvals and other actions:

  - **for declaration of an environmental objective or trigger**

- **for declaration of a protected environmental area or prohibited action or class of**
- **for strategic assessments**
- **for non-strategic assessments**

The exception relates to Section 88(2) which indicates that 'the Minister, by written notice to the proponent, may extend the required time for a decision to grant or refuse an environmental approval if the Minister considers this necessary.'

The MCA NT acknowledges that the complexity or sensitivity of a particular project proposal might require more than the usual time for the Minister to adequately understand all relevant aspects and become confident enough to decide on granting an environmental approval and associated approval conditions; however, there should be limits attached to this provision and extensions should require the Minister to negotiate a mutually-acceptable extension with the proponent.

B. Components of the draft Bill that are of concern to the MCA NT

- **Introduction *of a new ministerial Environmental Approval, independent of other decision criteria and project approvals***

The MCA NT believes that given the size of the Northern Territory, with its small and dispersed population with a limited range of options for achieving significant and sustainable regional economies and limited commerce-enabling infrastructure, that development approvals should be granted after the full range of relevant approval criteria have been considered, including environmental acceptability as well as potential benefits for regional, remote and Aboriginal economic development. Development approvals should not be subject to a veto solely on the basis of the outcome of an EIA process, especially if the anticipated risks to the environment can be effectively mitigated by appropriate measures. To ensure these are implemented by the proponent, these measures can be captured in approval conditions.

The MCA NT supports a model that includes a more comprehensive approach to balancing the benefits and risks of each significant development proposal in making a decision to approve or not approve development proposals should be adopted in the Territory. One option would be for the Environment Minister to be required to consult with other ministers whose portfolios are most relevant to the proposed development, including those that grant the equivalent of 'project approvals.' For major projects or significant developments, the Environment Minister should be required to seek advice or endorsement from the Northern Territory Administrator before making a decision to refuse to grant an environmental approval.

- **Introducing third party injunctions**

The MCA NT recommends that injunctions be permitted only from 'eligible applicants' defined, as above, as those with genuine standing, i.e. operators or those directly impacted by environmental impacts from an operation that is in breach of its approval conditions or those who have made a valid and genuine submission demonstrating adequate grounds for concern about potential environmental impacts.

- **Time for bringing civil proceedings against an operator**

The proposal to define a statute of limitations of three years for a civil action to be brought against an operator is excessive and inconsistent with statutes elsewhere in Australia and overseas. A more defensible or realistic limit, in terms of current practice, would be 3-6 months.

- **Introduction of environmental objectives, and triggers for referral and approval (activity-based and location-based)**

Although DENR has prepared and circulated a discussion draft on proposed environmental values and objectives; has used consultants to seek industry feedback; and has convened an industry workshop to refine them, these new components in the environmental regulatory framework are critically important to get right, and essential detail on what these will look like and how they will operate has not been released nor has consultation specifically targeted this.

The MCA NT and its members therefore submit that the government is asking for industry to complete a credible and considered assessment of these provisions in the draft Bill without adequate information. This would be comparable to the NT EPA being asked to complete a credible and considered assessment of a proposed development without adequate EIA documentation, which it would not do: it would instead 'stop the clock' until the proponent provided such critical information. The MCA NT believes that this draft legislation is being rushed through, without affording industry and other stakeholders access to adequate information on which to complete a considered and credible assessment.

- **Introduction of Environmental Bond and Environmental Levy**

The draft Bill indicates that environmental bonds and levies, analogous to those already imposed on mineral exploration and operation under the *Mining Management Act*, will be broadly applied to all new developments. The Bill indicates that the levy must not be imposed on a party already paying a similar levy (e.g. mining rehabilitation security levy); however, the Bill does not made a similar statement regarding imposition of an additional Bond.

The Bill is ambiguous in stating that bonds **may be** in the form of cash or bank guarantees: are these the only two options? Or are these two of a range of options? To 'future-proof' the legislation, the MCA NT recommends that more modern options be allowable, e.g. third-party surety bonds or, as done in Western Australia, valid attestation of financial assurance from proponents, which would not tie up capital that could be used on progressive rehabilitation or expansion.

Monies raised through an environmental levy should be used only to address legacy sites generated by operations associated with the industry that provided those funds.

Further, the Bill indicates that funds established to hold monies from levies will be held in trust accounts. **Such trusts are legally bound to be acquitted annually**, with reports published. This has never been done for the Mining Rehabilitation Fund, established in 2013, which had collected more than $36 million by 2017. The government must redress this breach and ensure that new funds held in trust as environmental levies comply with legislation and be publicly acquitted annually.

- **Introduction of a new 'financial assurance'**

The new legislation introduces another financial impost on industry: a financial assurance to be collected at the time an operator seeks a closure certificate when an agreed level of rehabilitation and remediation has been achieved. The wording suggests that the certificate will not be granted until the government has collected this additional non-refundable levy (tax). Members believe this is tantamount to holding the operator 'to ransom.' The Bill indicates that the financial assurance will be held by government for a **minimum of 20 years**, and **that at the end of 20 years, monies can be used for any other 'environmental liability' identified by the Minister.** The MCA NT strongly objects to introduction of this additional unjustified tax on industry (which essentially is penalising operators for successfully rehabilitating and closing a site); provisions for government keeping these funds for 20 years (which has no biophysical justification); and then not returning unused funds to the company that provided them.

- **Definitions of the 'decision-making principle', the 'precautionary principle' and 'principle of intergenerational equity'**

The Bill derives its definitions of 'decision-making principle' (Section 15), 'precautionary principle' (Section 16) and 'principle of intergenerational equity' (Section 17) from the EPBC Act and the Rio Declartion; however, **it has not carried across words relating to economic considerations in decision-making; cost-effective measures to prevent environmental degradation; or the right to development must be fulfilled** so as to equitably meet developmental and environmental needs of present and future generations. These statements should be included when the Bill is revised, to include the importance of economic development and cost-effictve mitigation in the reformed environmental regulatory framework.

- **Environmental audits**

Sections 138-139 explain that the NT EPA can direct a person to complete an environmental audit, but it also sets the terms for the audit at the cost of the proponent. This means that the NT EPA could dictate an audit with a scope that far exceeds what would be justified based on risk and available information at an unjustified cost to the operator.

A more sensible model would involve determining terms of reference for audits through negotiation between the operator and the regulator, including scope, which has financial implications.

- ***Criminal liability of Executive Officers***

If a court decides that an executive officer of a body corporate has failed to take reasonable actions to prevent a breach of the Environment Protection Act, and/or the officer was in a position to influence the conduct of the body in relation to the breach, and the officer recklessly failed to take reaonsable stape to prevent the contravention, then the executive officer may be found to be **criminally liable.**

What if the Executive Officer had acted in good faith on bad advice? Would the Executive Officer still be criminally liable?

- ***Standard approval conditions***

Section 98 of the Bill indicates that the regulations may provide for the preparation, approval, amendment and revocation of **standard conditions for environmental approval**; however, neither the Bill nor the regulations provide adequate descriptions of what these might look like or how they would operate. Regulation 120 (1 and 2) merely indicates that standard conditions will be drafted by the NT EPA and be subject to public review, and that they might apply to different types of action; different types of industry or processes; actions within different areas; or specific environmental impacts.

If based on environmental risk and adequate knowledge about avoiding, minimising or mitigation adverse environmental impacts from a development, then having standard approval conditions could improve the efficiency of EIA and approval processes; however, until more is known about how these will be developed and operate, the MCA NT cannot assess the value of standard approval conditions nor form an opinion on whether or not they would assist or hinder approval processes for the minerals sector.

- ***Proposed environmental objectives and triggers***

The Bill introduces environmental objectives and triggers to direct EIA and approval processes to target only those matters associated with a development proposal with potentially significant environmental impacts. Section 4 (Definitions) lists but does not actually define what triggers are, including approval triggers (activity- or location-based), environment triggers (a referral trigger or approval trigger), and referral triggers (activity- or location-based), nor Territory environmental objectives.

Section 36 and 37 indicate that the Minister can declare environmental objectives and triggers (activity- and location-based referral and approval triggers) and that objectives will reflect 'environmental matters that have value to the Territory and need to be protected.'

The MCA NT is aware that government is currently developing and refining the Territory environmental objectives in consultation with industry and the broader community, including convening a workshop on Environmental Values and Objectives on 19 November. Slide handouts from the workshop indicate that a final consultation report will be provided to the Minister and NT EPA, prior to another round of public and industry consultation, once proposed Objectives are advertised.

The current timeline for introducing the revised legislation should be substantially extended, to allow appropriate consultation between the regulator and industry to work out details regarding the nature of the triggers and how they would operate.

- ***Strategic Assessments***

The draft Bill (and Regulations) talk around the topic of strategic assessments and approval notices without providing adequate description of what these are and how they would be done, e.g. initiated and completed by the Territory government or a proponent. The only information provided is that it is up to the NT EPA to recommend to the Environment Minister if it believes that a strategic assessment be done instead of a standard assessment If these are part of the new regulatory framework, they need to be more fully explained. This is another important component of the draft Bill that needs to be addressed via adequate industry and government consultation.

C. Components of the draft Regulations that are welcomed by the MCA NT

- ***Re-introduction of tiered EIA processes, depending on complexity, range and significance of potential environmental impacts from a proposed development***

The MCA NT welcomes and endorses the re-introduction of tiered EIA processes, depending on the potential for significant and unacceptable environmental impacts and likely effectiveness of measures to avoid or mitigate impacts. This approach can potentially deliver a more streamlined EIA and approvals process through use of fewer and more simple requirements for project proposals with no or only limited potential for easily-mitigated environmental impacts.

If EIA and approval procedures are applied consistently and efficiently by the regulators, incorporating evidence- and risk-based criteria to appropriately assign proposed developments to each of these EIA options, then the reformed EIA process should substantially reduce the time and resources required of both the government and proponents to complete EIA and approvals processes.

D. Components of the draft regulations that are of concern to the MCA NT

- ***Registration of Environmental Practitioners and Environmental Auditors***

The Regulations merely detail the process of professionals seeking to obtain registration as Environmental Practitioners or Auditors. They do not indicate if, for purposes of completing an EIA and approvals process or in mandatory environmental monitoring or auditing, professionals must be registered practitioners or auditors. The supporting document for these provisions, however, Fact Sheet 12, page 7, indicates that the CEO of DENR may issue an environment protection notice and direct that a 'qualified person be engaged to undertake certain activities,' and that a 'qualified person' is

- **registered as an enviromental auditor in accordance with the draft Bill,**
- **registered as an environmental practitioner in accordance with the draft Bill, or**

- a person who has the qualifications and experience set out in the environment protection notice.

The MCA NT does not agree that the government should limit participation in auditing and other directed activities to those on the government's register. Many professionals have decades of experience and expertise and would be completely competent to undertake such work. The Bill should make explicit that environment protection notices can recognise a 'qualified person' as someone whose qualifications, experience and expertise are adequate and appropriate for the purposes of the notice.

- ***Standard terms of reference***

Regulation 74 indicates that the NT EPA may prepare standard terms of reference for projects assessed at the EIS or Inquiry level, in relation to particular industries, kinds of actions or kinds of impacts. The intent is to streamline assessment processes and timelines by allowing the NT EPA to apply standard terms of reference rather than preparing new terms of reference for every development proposal; however, these must be appropriate for any proposal to which they are being applied. For this reason, the government must engage and consult with industry and other stakeholders in the development of standard terms of reference before the draft Bill is amended and delivered to the Legislative Assembly.

Regulation 74(4) indicates that standard terms of reference **must include an assessment period of not less than 3 years for completed the draft EIS or Inquiry Report.'** The MCA NT believes that the regulations should not set a minimum time for EIS's or Inquiries to be completed. This would artificially prolong an EIA process that could conceivably be completed in 1-2 years, and be counter to the objective of the new Act and Regulations to streamline the assessment process.

- ***Standard approval conditions***

Regulation 120 explains that the NT EPA may prepare standard conditions of environmental approval for particular activities, particular industries or processes, actions within different areas or specific environmental impacts. The intent is to streamline approval processes by allowing the NT EPA to capture the kinds of conditions that are relevant and transferrable across different projects based on a similar risk profile for particular actions, processes or environmental impacts; however, it is critically important that they be appropriate when they are attached to environmental approvals.

More descriptive detail should be in the regulations, and the government must engage and consult with industry and other stakeholders when the NT EPA drafts these, to allow stakeholders to 'ground-truth' what is being proposed and ensure that they are risk- and evidence-based and practical. The draft Bill should not be tabled until this consultation is done.

- ***Fee for service***

The MCA NT does not support the imposition of essentially a 'fee for service' for the NT EPA to charge proponents for fulfilling its statutory responsibilities in relation to EIA, including if the NT EPA needs to engage experts to provide advice. If adopted, however, proponents should be charged the minimum fees associated with **efficient administrative processes**, as per the EPBC Act Cost Recovery Implementation Statement (2016-17):

> *Consistent with the Cost Recovery Guidelines, **the fees charged reflect the efficient provision of services** under the EPBC Act – that is, work conducted to fulfil legislative requirements within statutory timeframes. Cost recovery provides incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning, as this may reduce the level of assessment required and therefore the costs payable.*

E. ADDITIONAL CONCERNS AND QUESTIONS FOR THE GOVERNMENT

1. Regulatory impact statement (RIS)

- Information in ***The Northern Territory Government Regulation-Making Framework (November 2017)*** suggests that a Regulatory Impact Statement (RIS) should have been done before the new Environment Protection Bill and Regulations were drafted and published.
- The RIS should have developed and examined a range of feasible policy options to address a perceived need to amend or create new legislation in addition to demonstrating the impact of the new regulation on the community, **including industry**. The RIS is also intended to demonstrate a net public benefit (i.e. benefits outweigh costs); therefore, the RIS needs to indicate what costs the new legislation will impose on both the government to implement and industry to comply.
- The RIS should also include a comparison to similar regulatory frameworks and legislation in other jurisdictions, primarily to demonstrate how proposed reforms would bring the Territory into line with other jurisdictions.
- The RIS needs to provide adequate information on 'how new legislation would be implemented and how the operation/effectiveness of the legislation will be reviewed and assessed,' i.e. what KPI's will be used to demonstrate the effectiveness of the new legislation in meeting the needs for which the environmental regulatory reform program was established.

2. Government to demonstrate how reforms will be implemented

- If the Bill and Regulations are passed, the government should convene industry sector-specific workshops to demonstrate how the reforms will be implemented and to field questions.

3. Further Reforms – Stage 2 to incorporate changes to the *Mining Management Act* and *Water Act,* and inclusion of regulation of impacts from mining.

- Why is regulation of the mining sector to be captured in Stage 2 of development of the *EP Act* and no other industries that have the potential for significant environmental impacts?

4. Early Refusal in Regulations, Referral of proposed actions

- In Western Australia, there are some categories of developments that community groups and NGOs can be strongly opposed to, preventing some projects from having the procedural fairness of at least going through an EIA process to determine if they can proceed without unacceptable environmental impacts. In the NT, a good example of this is what happened with fracking; therefore, MCA NT is wary in relation to this provision.

RECOMMENDATIONS

Recommendation 1: Judicial appeals against decisions made by the Environment Minister, the NT Environment Protection Authority or licence or permit decisions by the CEO of DENR as part of EIA and approval processes should be allowed only from those directly affected by a decision (i.e. proponents and land managers/owners potentially or likely to be impacted by a proposed development) or those who have made a valid and genuine submission demonstrating adequate grounds for concern about potential environmental impacts.

Recommendation 2: If merit appeals are introduced as part of Stage 2 development of the Act, only those with standing as defined in Recommendation 1 above should be allowed to appeal decisions on the basis of merit.

Recommendation 3: If the the Minister requires additional time to decide whether or not to grant an environmental approval, they must negotiate a mutually-acceptable extension with the prononent and such extensions should not exceed 20 business days unless agreed to by the proponent.

Recommendation 4: The outcome from an EIA process should continue to be advice from the Minister for the Environment to the consent authority for proposed developments on whether or not a proposed development can proceed without unacceptable environmental impacts, with recommendations from the environmental assessment report forming the basis of approval conditions for development consent.

If the new Environment Protection Act introduces an environmental approval, then major projects or projects with significant potential social and economic benefits, should be referred to the Northern Territory Administrator for a decision based on all relevant criteria and not just environmental ones, such as the potential for the development to assist the government in achieving its objectives under the Economic Development Strategy.

Recommendation 5: The definition of 'eligible applicant,' in the context of applying for injunctions, should include only those persons who are or could be directly affected by the environmental consequences of an illegal act or omission by an operator that has been granted development and other operational approvals or those who have made valid and genuine submission demonstrating adequate grounds for concern about potential environmental impacts.

Recommendation 6: The Bill be should amended to indicate that injunctions or other civil actions may be brought against an operator for up to 6 months after the date of the alleged contravention of the Act.

Recommendation 7: The development of Territory environmental objectives and triggers should continue to include *bona* fide consultation with industry; objectives and triggers should be based on adequate research and knowledge to ensure that they are evidence- and risk-based; and that objective and triggers should be practical and cost-effective.

Recommendation 8: The legislation should include a statement that if a person has already paid an environment protection or rehabilitation bond or security under another scheme (e.g. the Mining Management Act), then an environment protection bond should not also be imposed on that person.

Recommendation 9: The legislation should include a statement that the Minister will accept environment protection bonds in the form of cash, bank guarantee, third-party surety bonds and other forms of security that can be satisfactorily negotiated between the operator and the Minister.

Recommendation 10: Environment Protection Fund monies must be used specifically to address legacy disturbed sites associated with the industry that contributed to the fund through the Environment Protection Levy.

Recommendation 11: Environment Protection Fund monies and Environmental Bond Accounts must be held in trust and properly and fully acquitted annually, with detailed reports on expenditure published.

Recommendation 12: The Environment Protection Act must not introduce the proposed new Financial Assurance, to cover the contingency that a successfully-rehabilitated site begins to fail at some time in the future.

Recommendation 13: If the government introduces a financial assurance, then funds should be kept for a maxiumum of 5 years, with the balance of funds returned to the operator.

Recommendation 14: The wording of the 'Decision-making principle' at Section 15 should include the importance of balancing all relevant considerations and be worded as follows: 'Decision-making processes should effectively integrate long-term and short-term economic, environmental, social and equitable considerations.'

Recommendation 15: Reference to the 'precautionary principle' in Section 16 should be worded as follows, to be complete and consistent with the version used globally since the Rio Declaration (1992): If there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'

Recommendation 16: The reference to the 'principle of intergenerational equity' should be reworded as follows, to be complete and consistent with the version used globally since the Rio Declaration (1992): 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Recommendation 17: The scope or terms of reference for an environmental audit directed by the CEO of DENR should be negotiated in consultation between DENR and the operator.

Recommendation 18: The government and NT EPA should engage with industry in working out details related to development of standard approval conditions, prior to NT EPA's recommendation that the Environment Minister approve these.

Recommendation 19: The government and NT EPA must continue to engage with industry in working out details related to development of environmental objectives and triggers.

Recommendation 20: The Bill and regulations must be revised to provide adequate detail on the nature, objectives and operation/administration of strategic assessments.

Recommendation 21: **The Bill and regulations should be revised to make explicit that environment protection notices can recognise a 'qualified person' as someone whose qualifications, experience and expertise are adequate and appropriate for the purposes of the notice and to prepare EIA documents, provide independent review of documents, provide advice on the EIA process, undertake an investigation or prepare or review any of the documents required in an EIA process.**

Recommendation 22: **The regulations should be revised to provide more descriptive detail about standard terms of reference and government should consult with industry and other stakeholder groups to 'ground-truth' these when they are being developed and ensure they are risk- and evidence-based, and practical.**

Recommendation 23: **Regulation 74(4) should be removed, so that no minimum period for an EIS or Assessment by Inquiry processes be set.**

Recommendation 24: **The Bill and regulations should be revised to provide more descriptive detail about standard approval conditions and government should consult with industry and other stakeholder groups to 'ground-truth' these and ensure they are risk- and evidence-based, and practical.**

Recommendation 25: **If the regulations empower the NT EPA to charge a fee for providing services in support of the EIA processes it oversees, then it must be able to demonstrate that these processes are efficient and therefore charges to a proponent will be the minimum required for these processes to be completed. The costs recovered should be offset by a reduction of taxes. Otherwise this duplicates cost recovery.**

Recommendation 26: **If it has not already done so, the government should complete a regulatory impact statement (RIS) on the new legislation (Act and Regulations), and publish results. The RIS needs to include a range of alternatives to drafting new legislation to address a perceived or actual problem/deficiency and demonstrate why the new legislation is the best option in addition to costs to government, business and industry.**

Recommendation 27: **The RIS should include a comparison to similar regulatory frameworks and legislation in other jurisdictions, to demonstrate how proposed reforms would bring the Territory into into line with other jurisdictions.**

Recommendation 28: **The RIS should provide adequate information on how the new legislation would be implemented and reviewed, including KPIs to judge if the intended benefits of the new environmental regulatory framework are being achieved.**

Recommendation 29: **If and when the legislation is passed, the government should convene industry sector-specific workshops to demonstrate how the reforms will be implemented and to field questions.**

1 INTRODUCTION AND BACKGROUND

The MCA NT and its role in industry support

The Minerals Council of Australia Northern Territory Division (MCA NT) welcomes the opportunity to provide a submission to the Northern Territory Department of Environment and Natural Resources (DENR) on its Draft Environment Protection Bill and Regulations. The MCA NT acknowledges the commitment of DENR over the past two years to engage with our organisation during development of this legislation. This facilitated consultation has proven useful in addressing key concerns. For example, the Bill's original provisions to allow third party appeals on decisions in the environmental impact assessment (EIA) process was mutually acknowledged as a serious weakness subsequently amended by the government.

The MCA NT acknowledges the substantial efforts on the part of DENR to develop the Bill in response to weaknesses identified in several reviews over the past decade or so in the Territory's environmental regulatory framework, particularly in the EIA and approvals processes.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally and socially responsible and attuned to community needs and expectations.

The Australian minerals industry supports environmental regulation that is both efficient in its operation and effective in achieving desired outcomes. Both community confidence and certainty for business are critical benchmarks for effective regulation.

In this submission, the MCA NT does not seek to compromise environmental standards or safeguards that are integral to best practice EIA and approval processes. Instead, it seeks to promote development and adoption by the Territory Government of more streamlined and risk- and evidence-based processes that achieve effective environmental outcomes through the removal of costly duplication and unnecessary regulatory burden.

The importance of the minerals sector to the Northern Territory Economy

The minerals industry is Australia's largest export earner and the most globalised sector of the economy. It has been a major source of growth, investment, jobs and higher living standards in both the Northern Territory and nationally, as well as a large contributor to government revenues.

The mining and mining equipment, technology and services (METS) sector represents an important source of economic activity in the Northern Territory. Key minerals for the Territory include bauxite, gold, manganese, lead-zinc and uranium. It is the second largest sector in the Territory and has the potential to continue to be a key driver of economic growth and development in northern Australia if Northern Territory policy and regulatory settings are right.

The mining and energy sectors have the potential to contribute significant benefits to regional and Indigenous Territorians, through creation of high-skilled and well-paid jobs, with average wages in the minerals sector 64 per cent higher than the all-industries average. Nationally, more than 60 per cent of all mining jobs in Australia are in regional and remote areas.

The government's June 2017 Northern Territory Economic Development Framework identifies mineral production and exploration as the main drivers of economic activity and employment in central Australia (Alice Springs region), the East Arnhem region and Katherine region in the short to medium term. To ensure this can come to fruition, the right policy settings are required.

The impact of regulatory uncertainty on investment attractiveness

The minerals sector is global and highly competitive in terms of investment attraction, both within Australia (between states) and internationally. Investment capital is highly mobile and will flow down the path of least resistance, including regulatory resistance, in the form of overly burdensome and/or uncertain or inconsistent EIA and approvals processes.

The protracted nature of the Territory's current EIA and approvals processes, compounded by having almost every piece of legislation and policy relating to mining under review for the past two to three years, has resulted in the overall attractiveness of the Northern Territory slipping form 7th in the world in 2015 (in a pool of approximately 100 countries, states and provinces) to 20th in 2016 and 27th in 2017, according to the Canadian Fraser Institute's annual surveys of mining and exploration companies. This demonstrates that it is not sufficient to have world-class mineral wealth and prospects: policy and regulatory settings have a major role in the attractiveness of a jurisdiction for future investment.

Because the MCA NT recognises the critical importance of re-building and maintaining the Territory's reputation as an attractive place for overseas and interstate investors, it has been an active and constructive player throughout the extensive environmental regulatory reform process.

The organisation also recognises that **certainty is critical for proponents** in navigating requirements associated with EIA and approvals processes and **critical for the public**, who must have appropriate opportunities to have their concerns acknowledged and considered.

2 PRINCIPLES OF BEST PRACTICE ENVIRONMENTAL REGULATION

The MCA NT considers that all territory, state and federal government priorities should include minimum effective regulation that is not unduly prescriptive but is enforceable and can be consistently administered.

The following is a short list of attributes that the MCA NT believes comprise best practice environmental regulation:

1. **Consistent:** Regulations adopted in the Territory should be consistent with regulations elsewhere in Australia. We should not adopt principles or processes that are not already in place elsewhere in Australia unless there are specific unique circumstances that can be detailed, and an assessment of why existing Australian regulations should not be applied. This is a basic filter that should apply to the all provisions in the Draft Bill and Regulations. Reform should also consider the need to enable streamlining and accreditation of Territory processes with Commonwealth requirements.
2. **Proportionate:** The extent of regulation, including assessment and compliance requirements, should be commensurate with environmental risk.
3. **Efficient.** Regulatory processes should be efficient in achieving desired/required environmental outcomes.
4. **Accountable:** Regulators must be accountable for their environmental impact assessments, advice and approvals, and monitoring compliance with approval conditions, and **proponents must be accountable** for the completeness and credibility of documentation provided for EIA and compliance with approval conditions.
5. **Transparent and sound:** Regulation should be implemented transparent manner using evidence-based assessment, including in the setting of terms of reference for EIS's and inquiries.
6. **Certainty:** the public must have confidence in the robustness and effectiveness of regulation and be given appropriate opportunities for engagement in the EIA and approvals processes, and **proponents must have confidence** that their demonstration, through a robust and efficient EIA process, that potentially significant environmental impacts from proposed developments can be adequately managed, will lead to the timely granting of environmental and development approvals.

Regulation that falls short of these criteria is likely to fail in its objectives, impose unnecessary costs, impede innovation and/or create barriers to efficiency and productivity. It may also cause a loss of community trust and faith in the regulatory process as well as loss of confidence in potential investors.

These principles underpin the MCA NT's assessment of the draft Environment Protection Bill and Regulations, as outlined in this submission.

3 COMMENTS ON THE DRAFT ENVIRONMENT PROTECTION BILL

A. Components of the draft Bill that are welcomed by the MCA NT

- **Restricting *appeals to those with* bona fide *standing (MCA NT supports, with two exceptions)* [Sections 214, 254 and 255]**

The original consultation draft of the Bill granted open standing to judicial reviews (i.e. appeals on the basis that decisions or processes underpinning them were unlawful) and very broad standing to merit reviews (i.e. appeals challenging the validity of decisions from a perspective that decisions were not adequately supported by evidence).

The Minister for the Environment released a statement on 30 October 2018, indicating that these provisions for standing would be amended before the Bill was tabled, such that judicial reviews would be accepted only from those directly affected by a decision or those who made a valid and genuine submission to the decision-making process. Furthermore, and the merits reviews would not be accepted for decisions made in relation to EIA and approvals (i.e. the current Stage 1 of the Bill).

The MCA NT strongly supports the amendment that only judicial reviews will be accepted on decisions relating to EIA and approvals and that only those directly affected by a decision should have the right of appeal, i.e. proponents and land managers/owners potentially or likely to be impacted by a proposed development.

With regard to granting standing to someone who makes a 'valid and genuine' submission during an EIA process, the Bill must include a requirement that standing be contingent on the submission demonstrating adequate grounds for concern about potential environmental impacts. Without this requirement, the provision would allow anyone who has made a submission to lodge an appeal from a purely ideological basis, as is done by anti-development lobby groups. Restricting access to judicial review would reduce the opportunity for legal challenges (that have no sound basis) to delay development projects that have met all regulatory requirements, without compromising the ability of genuinely interested or potentially affected parties to pursue their legitimate interests.

Judicial review processes are important to safeguard the rights and interests of affected individuals and to ensure development assessment and approval processes remain robust. The use of these mechanisms, however, to relentlessly appeal decisions for the purposes of delaying or halting projects for ideological reasons is contrary to the intent of these safeguards. To avoid this, the courts must use adequately robust criteria to discriminate between legitimate appeals and those without adequate grounds and permit only the former to go forward.

The same 30 October statement indicated that the government will consider introducing merits review during Stage 2 further development of the *Environment Protection Act* for decisions associated with operational approvals made by DENR to regulate the environmental impacts of mining and other industries. The statement indicated that policy settings for standing will be subject to consultation with industry.

For the reasons provided above for judicial reviews, the MCA NT is strongly opposed to allowing merit appeals from persons with no legitimate connection with the proposed development, and instead urges the government to grant standing on the basis of criteria described above.

Recommendation 1: Standing for judicial appeals against decisions made by the Environment Minister, the NT Environment Protection Authority or licence or permit decisions by the CEO of DENR as part of EIA and approval processes should be granted only to those directly affected by a decision (i.e. proponents and land managers/owners potentially or likely to be impacted by a proposed development) or those having made a valid and genuine submission

during the EIA and approvals process, demonstrating adequate grounds for concern about potential environmental impacts.

Recommendation 2: If merits appeals are introduced as part of Stage 2 development of the Act, only those with standing as defined in Recommendation 1 above should be allowed to appeal decisions on the basis of merit.

- **Explicit time *limits for regulators to process and complete their responsibilities under the Act* [Sections 39(3), 45(3), 52(3), 74(2), 76(2), 88(5a and b), with one exception**

The MCA NT supports the inclusion of statutory timeframes for the following processes. This will provide greater certainty to proponents and the public:

- [**for declaration of an environmental objective or trigger]** A public consultation period of at least 30 business days before a Minister declares a Territory environmental objective or trigger [Section 39(3) and 45(3)]
- **[for declaration of a protected environmental area or prohibited action or class of actions]** A public consultation period of at least 30 business days before declaration [Section 52(3)]
- **[for strategic assessments]** 10 business days for the Minister to request further information as part of the EIA process to grant approval notices for proposed developments within an area for which a strategic assessment has been completed [Section 74(2)] and 30 days for the Minister to decide on an application for a an approval notice [Section 76(2)]
- **[for non-strategic assessments]** 30 business days after receipt of the NT EPA's environmental assessment report the Minister for the Environment to decide on granting an environmental approval for EIA at the level of a referral and 40 business days for EIA at any other level, once the Minister has received the Environmental Assessment [Section 88(5a and b)]

The exception relates to Section 88(2) which indicates that 'the Minister, by written notice to the proponent, may extend the required time for a decision to grant or refuse an environmental approval if the Minister considers this necessary.'

Although the MCA NT acknowledges that the complexity or sensitivity of a particular project proposal might require more than the usual time for the Minister to adequately understand all relevant aspects and become confident enough to decide on granting an environmental approval and associated approval conditions, there should be limits attached to this provision and extensions should require the Minister to negotiate a mutually-acceptable extension.

Recommendation 3: If the Minister requires additional time to decide whether or not to grant an environmental approval, they must negotiate a mutually-acceptable extension with the prononent and such extensions should not exceed 20 business days unless agreed to by the proponent.

B. Components of the draft Bill that are of concern to the MCA NT

- **Introduction *of a new ministerial Environmental Approval, independent of other decision criteria and project approvals***

Under the current *Environment Assessment Act*, the outcome of an EIA process is an assessment by the NT EPA regarding whether or not a proposed development can proceed without unaccepable environmental impacts.

This assessment is based on the NT EPA's consideration of the environmental assessment report (EAR) prepared by DENR, which includes recommendations to ensure that standards, safeguards and other mechanisms to avoid or mitigate potentially significant environmental impacts will be implemented by the proponent throughout the construction, operation, rehabilitation and closure of a proposed development.

The NT EPA presents its assessment to the environment minister, which includes the 'bottom line' statement regarding the ability of the development to avoid unacceptable impacts if the recommendations in the EAR form the basis of approval conditions set by the consent authority. Currently, the consent authority for mineral projects is the Minister for Resources.

The environment minister's assessment is **advisory:** the Minister for Resources can either accept or reject the Minister for the Environment's advice regarding granting development approval (mineral lease and associated approvals). If the Minister for Resources makes a decision contrary to the advice of the Minister for Environment, they must defend their position to Cabinet. Having the outcome from an EIA process be advisory rather than an approval allows the Minister for Resources to weigh up and balance environmental considerations with social and economic factors along with other considerations, as is done in other jurisdictions.

In New South Wales, for example, some types of developments are deemed to be State Significant Develoments (SSDs) on the basis of size, economic value or and other potentially-signifcant benefits that a development may have. Mining and extraction operations, in addition to energy-generating facilities, educational and medical centres and other developments are also considered SSDs. The Minister for Planning is the consent authority for SSD applications.

In Queensland, projects may be declared 'coordinated projects,' subject to approvals by the Coordinator-General, if they are characterised by one or more of the following:

- complex approval requirements, involving local, state and federal governments
- significant environmental effects
- strategic significance to the locality, region or state, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide
- significant infrastructure requirements.

In both of these jurisdictions, the consent authority is charged with considering a broad range of criteria, in addition to outcomes from EIA, in providing or not providing a development approval. These may include

- relevant state policies and government priorities
- relevant planning schemes and policy frameworks of local, state and federal governments
- how a project meets an identified need, demand or priority.

The consent authority responsible for assessing all aspects of a project may, for example, accept a greater level of environmental impact from a proposed development than that accepted by the statutory body that oversees the EIA process if the socio-economic benefits from the project were substantial and would allow achievement of critical development priorities for the government. One such priority is the development of sustainable regional, remote and Indigenous communities and population growth, and the majority of the Territory's existing mines and those in the development pipeline are in such areas, with operating mines exceeding national averages for Indigenous employment.

The MCA NT considers that the Territory, which covers a substantial area but has a small and dispersed population, has a limited range of options for achieving significant and sustainable regional economies and limited commerce-enabling infrastructure. Given this, development approvals should

be granted after the full range of relevant approval criteria have been considered, including potential benefits for regional, remote and Aboriginal economic development. Development approvals should not be subject to a veto solely on the basis of the outcome of an EIA process, especially if the anticipated risks to the environment can be effectively mitigated by appropriate measures. To ensure these are implemented by the proponent, these measures can be captured in approval conditions. This is consistent with approaches in other jurisdictions, including federal approvals under the EPBC Act.

A model should be adopted in the Territory that includes a more comprehensive approach to balancing the benefits and risks of each significant development proposal in making a decision to approve or not approve development proposals.

Recommendation 4: the EIA outcomes continue to be presented as advice from the Minister for the Environment to the consent authority for proposed developments on whether or not a proposed development can proceed without unacceptable environmental impacts, with recommendations from the environmental assessment report forming the basis of approval conditions for development consent.

If the new Environment Protection Act introduces a specific environmental approval, then major projects or projects with significant potential social and economic benefits, be referred to the Northern Territory Administrator for a decision based on all relevant criteria and not solely on environmental factors, such as the potential for the development to assist the government in achieving its objectives under the Economic Development Strategy.

- **Introduction *of third party injunctions* [Sections 214 and 215]**

The MCA NT acknowledges and agrees with the need to be able to immediately stop any activity that threatens significant environmental harm when this activity has not been approved or contravenes environment protection legislation. It does not, however, endorse the definition of 'eligible applicant' in applying to the court for an injunction, which includes the same categories of persons our organisation objected to in terms of third party appeals via judicial or merit review of government and ministerial decisions and which the government committed to reversing.

Including such a broad definition of 'eligible applicant' will open the injunction process to applications that have no legitimate grounds, particularly amongst anti-development groups that use such provisions to cause delays and impose costs on proponents.

Recommendation 5: The definition of 'eligible applicant,' in the context of applying for injunctions, should include only those persons who are or could be directly affected by the environmental consequences of an illegal act or omission by an operator that has been granted development and other operational approvals, or those having made a valid and genuine submission during the EIA and approvals process, demonstrating adequate grounds for concern about potential environmental impacts.

- **Time *for bringing proceedings in relation to injunctions, orders and other civil proceedings* [Part 12, Division 1, Section 225]**

Section 225(1), Time for bringing proceedings under this Division, indicates that injunctions or other civil orders might be brought against an operator 'at any time within 3 years after the date of the alleged contravention of this Act.' Three years is an excessively long period for an operator to be vulnerable to such actions after a breach has occurred. Further, the delay increases the difficulty an operator would have in challenging allegations and does little to protect the environment from significant harm.

The MCA NT recommends that the period during which an injunction can be applied be constrained to no more than 6 months. For example, appeals to the Land Court in Queensland must be brought withing 22 days (Sectin 525 of the *Environment Protection Act 1994*) and judicial review of processes under the EPBC Act must be requested within 28 days. Challenges to the validity of a developmet consent in New South Wales must be brought withing three months (Section 4.59 *Environmental Planning and Assessment Act 1979).*

Even the Territory's own *Waste Management and Pollution Control Act*, Section 94 indicates that 'a complaint for an offence against this Act may be brought at any time **before 12 months after the NT EPA first became aware of the commssion of the offence.'**

Recommendation 6: The Bill should be amended to indicate that injunctions or other civil actions may be brought against an operator for up to 6 months after the date of the alleged contravention of the Act.

- **Introduction *of Territory environmental objectives and activity-based and location-based referral and approval triggers* [Part 5, Division 1]**

The MCA NT understands the intent to develop environmental objectives as a mechanism to focus EIA requirements on those aspects with greatest potential for adverse impacts f. Essentially, a proponent would be asked to address in EIA only those environmental matters relevant to the proposed development. For example, a remotely located mining project would not be asked to complete baseline studies on potential impacts of construction or operational noise on neighbouring communities where none exist.

The MCA NT and other stakeholders have been involved in workshops and other consultations convened by the government to assist in identification and development of relevant and practical environmental objectives; however, until these have been developed to a stage at which the likely effectiveness of these in targeting EIA requirements can be reviewed, there is a risk that they might not be specific enough to achieve the desired streamlining of processes and instead 'capture' every aspect of a proposed new development.

The Bill requires the Minister to subject proposed objectives and triggers to industry and community review, and the MCA NT welcomes that the need for adequate consultation will be enshrined in the legislation.

The MCA NT expects the government to recognise that new ministerial powers to establish assessment and approval triggers need careful consideration.

Similar concerns relate to the development of activity- and location based triggers for referrals and approvals, which will also be subject to community and industry review and consultation. MCA NT understands that triggers can reflect the sensitivity of particular areas or the potential for particular activities to have adverse environmental impacts (e.g. dredging in shallow coastal waters).

Caution is needed in considering activity specific triggers. These are likely to expand and encompass whole sectors, not individual activities. Regulation should focus on any actions that are likely to have a significant impact on identified environmental values, regardless of activity type. The MCA NT holds concerns that the relative ease afforded the Minister in establishing new triggers will result in sector-specific triggers developed in response to activism (ideology) or political pressure.

There is a danger that activity-specific triggers will discriminate against some industries. For example, these triggers may lead to a likely future situation where similar development activities are being undertaken side by side and both activities have an equal impact, yet only the target activity will require environmental approval at significant cost to the proponent.

Should an activity based trigger be pursued, a clear case must be first be made to define the specific and unique aspects of the activity that warrant such a blanket approach. Furthermore, it is important any activity trigger should not result in a 'whole of project referral and approval'.

Recommendation 7: The development of Territory environmental objectives and triggers should continue to include *bona* fide consultation with industry; objectives and triggers must be evidence- and risk-based; and objectives and triggers are practical and cost-effective. Activity based triggers for referral and approval should be removed. If pursued, such triggers should relate only to those specific aspects unique to that activity and appropriate safeguards must be put in place to mitigate these impacts.

- **Introduction *of Environment Protection Bond and Levy* [Part 9, Division 1: Bond and Division 2: Levy] - including use of funds and form of Bond**

Part 9, Financial Provisions, introduces a new environmental protection bond and environment protection levy. Our industry is already very familiar with these imposts, through the lodgement of rehabilitation security bonds (to cover the cost to satisfactorily rehabilitate and close a mine site should an operator do not complete this) and the rehabilitation security levy, which is a non-refundable impost comprising 1% of the size of the bond, to be used to address the Territory's legacy mine sites. At least one-third of the Mining Rehabilitation Fund (of pooled levies) must be used for on-ground activities to remediate legacy sites. (Government should note that in the original discussions between the MCA NT and government in 2013, when the mining minister introduced the concept of a legacy mine levy, government assured industry that **100% of revenue** would be spent on on-ground activities and that funds would never be co-minged with other funds in general revenue. In both instances these assurances were not followed through, either in practice or legislation.)

Section 128 explicitly states that the levy must not be imposed on a person if that person has already paid an analagous levy under another scheme, and the Bill should have had a similar statement in relation to the environment bond. This should be specifically addressed in the legislation.

Recommendation 8: The legislation must include a statement that if a person has already paid an environment protection or rehabilitation bond or security under another scheme (e.g. the Mining Management Act), then an environment protection bond must not also be imposed on that person.

Section 123(3) indicates that the Minister may determine the **nature of the bond** to be provided which **may** include cash or bank guarantee. This statement is ambiguous. It either means that these are the only two options of that these are only two options among many.

Other options should also be accepted where they provide the appropriate safeguards. The MCA NT would like to 'future-proof' the legislation by including other acceptable forms of bonds, including third party surety bonds, insurance and other Tier 1 surety instruments that are being accepted in other jurisdictions. This frees up the significant cash that would otherwise be tied up in bank guarantees (which are also expensive to service).

Recommendation 9: The legislation should include a statement that the Minister will accept environment protection bonds in the form of cash, bank guarantee, third-party surety bonds and other Tier 1 surety instruments that meet government requirements.

The MCA NT supports that funds generated by levies should be used only for works relevant to the industry that provided the funds and should be restricted to addressing legacy sites. These funds should not be a generic 'slush fund' for research or 'other activities relating to protecting or enhancing the environment.' The MCA NT also supports Section 132(5) that if a 'fund includes an amount of levy paid in respect of a particular industry, that amount cannot be expended for the support of another industry unless the other industry is impacted by the particular industry.'

Recommendation 10: 100% of the Environment Protection Fund monies should be used specifically to address legacy disturbed sites associated with the industry that contributed to the fund through the Environment Protection Levy.

Section 124(2) indicates that the Environmental Bond Account **must be a trust account.** The MCA NT recommends that environment protection funds also be held in trust (as are Mining Rehabilitation Funds), with the government formally acquitting the account annually, including specifics on what purposes funds were used for and associated expenditure, and their associated KPIs. The MCA NT considers that such trusts **must be acquitted annually,** and reports published; however, this has never been done for the Territory's Mining Rehabilitation Fund. Contributing companies have an interest in and a right to know how funds that they have contributed have been used, as these are not public monies.

Recommendation 11: Environment Protection Fund monies and Environmental Bond Accounts must be held in trust and properly and fully acquitted annually, with detailed reports on expenditure published.

Section 129(3), Amount of Levy, indicates that 'the regulations may provide for the amount of the environment protection levy and the method of calculating the levy to be different in relatio to different classes of actions or industries or circumstances.' The draft regulations do not include information on the amount of the levy nor do they include levy calculators. The MCA NT assumes that these will be incorporated in regulations developed as part of Stage 2 reforms, that will deal with managing the environmental impacts from mining. The MCA NT also assumes that the levy must not be imposed on a person if that person has already paid an analagous levy under another scheme.

Recommendation 12: The legislation should specifically address the interaction with other legislation and additionality of multiple levies for the same activity.

- **Requirement *to provide financial assurance (a new tax/levy)* [Section 196]**

This Section introduces a new and additional financial impost on operators: a 'financial assurance.' This is intended to provide the government with adequate funds to remediate a site if the original remediation, upon which a closure certificate is issued, begins to fail and result in significant environmental degradation.

The size of the financial assurance would be set by the Minister for the Environment and would be held by the government **for at least 20 years.** If, at the end of 20 years, none or only a portion of these funds has been spent, then the balance can be used to address environmental issues at other sites.

The MCA NT is concerned that such a significant provision was not mentioned during any of the consultations with DENR, while the Bill was being drafted, and our members oppose the introduction of this additional levy on top of the existing rehabilitation security bond and legacy mine levy.

The government has also failed to acknowledge the substantial and significant monies paid to land councils to secure settlement of Native Title Mining Agreements and the compounding detriment this has in terms of building the attractivenss of the Territory to interstate and overseas investors in minerals projects, when considered alongside the existing mining rehabilitation bonds and levies and proposed introduction of the financial assurance to be posted by proponents post closure.

Mining companies also pay significant 'block rentals' for both mineral leases and exploration leases, monies that are also avaiable for reinvestment into the sector to address residual legacy issues.

Further, as indicated above, the attractiveness of the Northern Territory for potential future investors in the minerals sector will be further eroded from this impost and is likely to result in a further fall from 27th most attractive place to invest, when the 2018 Fraser Survey comes out, in early 2019. As

investment capital is fluid and will flow down the path of least resistance, imposts like this will promote the flow of investment capital to other Australian States and overseas.

The erosion of the Territory's ranking is largely a product of our policies departing from those of other jurisdictions, which in some cases has led to investors initially targeting the Territory to develop a new minerals project but then deciding to develop their projects elsewhere, because of more consistent and efficient EIA and approvals processes that have not been under review for years.

The justification for such a long period of time for the financial assurance to be held has not been provided in the Draft Bill: if something is going to go wrong with a satisfactorily remediated site, that has passed requirements for successful closure, one would expect to see signs of this over a much shorter time period, e.g. 5-10 years.

During any mining activity, significant taxes are paid to the government and to some extent should be available for long-term (100 years plus) stewardship of the land. The MCA NT questions why a portion of these funds is not being 'quarantined' for use to address legacy issues or cases where a site has been closed but then, after a number of years, the remediated land begins to deteriorate.

The MCA NT also strongly objects to the **government keeping these funds, to use on any environmental matter,** when it should be returned to the operator if the site proves to be stable. Why should an operator be penalised financially for having done a good job on remediating its site?

Recommendation 12: The Environment Protection Act should not introduce the proposed new Financial Assurance, to cover the contingency that a successfully-rehabilitated site begins to fail at some time in the future.

Recommendation 13: If the Act does include financial assurance for residual risk in the Territory, it should be given proper consideration, allowing sufficient time for meaningful consultation. Funds should be kept for a maximum of 5 years, with the balance of funds returned to the operator. The financial assurance should be offset by a reduction in taxation to the same value.

- **Loss *of* important *aspects of definitions of the 'decision-making principle' and the 'precautionary principle' from the original globally-accepted definitions* [Sections 15, 16 and 17]**

Under Principles of environmental protection and management (Section 15), the draft Bill states that 'Decision-making processes should effectively integrate long-term and short-term and equitable considerations.' This statement has been derived from the EPBC Act; however, is omits the critically important terms 'economic, environmental and social' in reference to long- and short-term considerations. In this submission, the MCA NT has emphasised the importance of project approvals based on a *bona fide* assessment of the broad range of criteria that should be considered when granting an approval for a proposed development. Social and economic considerations should also be considered.

Recommendation 14: The wording of the 'Decision-making principle' at Section 15 should include the importance of balancing all relevant considerations and be worded as follows: 'Decision-making processes should effectively integrate long-term and short-term economic, environmental, social and equitable considerations.'

Similarly, in Section 16, the Bill somewhat paraphrases the UNCED definition of the 'precautionary principle' in the Rio Declaration, and in so doing, omits reference to the importance of cost-effectiveness when considering measures to avoid unacceptable environmental harm.

Recommendation 15: The reference to the 'precautionary principle' in Section 16 should be worded as follows, to be complete and consistent with the version used globally since the Rio

Declaration (1992): If there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'

The wording of Section 17, in reference to the Principle of intergenerational equity, has not acknowledged the right for adequately assessment and managed development to proceed. Current wording reads 'The present generation should ensure that the health, diversity and productivity of the environment is (sic) maintained and enhanced for the benefit of future generations'; however, the full definition, as used in the Rio Declaration, includes this right.

Recommendation 16: The reference to the 'principle of intergenerational equity' should be reworded as follows, to be complete and consistent with the version used globally since the Rio Declaration (1992): 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

- ***Environmental audits*** **[Sections 138-139]**

Sections 138-139 explain that the NT EPA can direct a person to complete an environmental audit, but it also sets the terms for the audit at the cost of the proponent. This means that the NT EPA could dictate an audit with a scope that far exceeds what would be justified based on risk and available information at an unjustified cost to the operator.

A more sensible model would involve determining Terms of Reference through negotiation between the operator and the regulator, including scope, which has financial implications.

Recommendation 17: The scope or terms of reference for an environmental audit directed by the CEO of DENR should be negotiated in consultation between DENR and the operator.

- ***Criminal liability of Executive Officers*** **[Section 245]**

If a court decides that an executive officer of a body corporate has failed to take reasonable actions to prevent a breach of the Environment Protection Act, and/or the officer was in a position to influence the conduct of the body in relation to the breach, and the officer recklessly failed to take reaonsable stape to prevent the contravention, then the executive officer may be found to be **criminally liable.**

What if the Executive Officer had acted in good faith on bad advice? Would the Executive Officer still be criminally liable?

- ***Standard approval conditions [Section 98]***

Section 98 of the Bill indicates that the regulations may provide for the preparation, approval, amendment and revocation of **standard conditions for environmental approval**; however, neither the Bill nor the regulations provide adequate descriptions of what these might look like or operate. Regulation 120 (1 and 2) merely indicate that standard conditions will be drafted by the NT EPA and be subject to public review, and that they might apply to different types of action; different types of industry or processes; actions within different areas; or specific environmental impacts.

If based on environmental risk and adequate knowledge about avoiding, minimising or mitigation adverse environmental impacts from a development, then having standard approval conditions could improve the efficiency of EIA and approval processes; however, until more is known about how these will be developed and operate, the MCA NT cannot assess the value of standard approval conditions nor whether or not they will assist or hinder approval processes for the minerals sector.

Recommendation 18: The government and NT EPA must engage with industry in the development of standard approval conditions, prior to NT EPA's recommendation that the Environment Minister approve these.

- ***Proposed environmental objectives and triggers*** **[Sections 4, 36 and 37]**

The Bill introduces environmental objectives and triggers to direct EIA and approval processes to target only those matters associated with a development proposal with potentially significant environmental impacts. Section 4 (Definitions) lists but does not actually define what triggers are, including approval triggers (activity- or location-based), environment triggers (a referral trigger or approval trigger), and referral triggers (activity- or location-based), nor Territory environmental objectives.

Section 36 and 37 indicate that the Minister can declare environmental objectives and triggers (activity- and location-based referral and approval triggers) and that objectives will reflect 'environmental matters that have value to the Territory and need to be protected.

The MCA NT is aware that government is currently developing and refining the Territory environmental objectives in consultation with industry and the broader community, including convening a workshop on Environmental Values and Objectives on 19 November. Slide handouts from the workshop indicate that a final consultation report will be provided to the Minister and NT EPA, prior to another round of public and industry consultation, once proposed Objectives are advertised.

Recommendation 19: The government and NT EPA should continue to engage with industry in the development of environmental objectives and triggers.

- ***Strategic Assessments*** **[Sections 4, 73, 76, 111 and 112]**

The draft Bill (and Regulations) talk around the topic of strategic assessments and approval notices without providing adequate description of what these are and how they would be done, e.g. initiated and completed by the Territory government or a proponent. The only information provided is that it is up to the NT EPA to recommend to the Environment Minister if it believes that a strategic assessment be done instead of a standard assessment If these are part of the new regulatory framework, they need to be more fully explained.

Recommendation 20: The Bill and regulations should be revised to provide adequate detail on the nature, objectives and operation/administration of strategic assessments.

4 COMMENTS ON THE DRAFT ENVIRONMENT PROTECTION REGULATIONS

A. Components of the draft regulations that are welcomed by the MCA NT

- ***Re-introduction of tiered EIA processes, depending on complexity, range and significance of potential environmental impacts from a proposed development [Divisions 3, 4, 6 and 7]***

The MCA NT welcomes and endorses the re-introduction of tiered EIA processes, depending on the potential for significant and unacceptable environmental impacts and likely effectiveness of measures to avoid or mitigate impacts. This approach can potentially deliver a more streamlined EIA and approvals process through use of fewer and more simple requirements for project proposals with no or only limited potential for easily-managed environmental impacts.

Historically, the Territory had three levels for EIA reflecting the potential for unacceptable adverse environmental impacts:

- Assessment on the basis of information in the **Notice of Intent** (~ referral information), for projects with either no or easily-mitigated environmental impacts
- Assessment on the basis of a **Preliminary/Public Environment Report** (PER), for projects with a limited range of potentially significant environmental impacts
- Assessment on the basis of an **Environmental Impact Statement** (EIS).

Despite the availability of these three options, however, over the past 10-15 years, the government routinely required proponents to prepare an EIS for any significant development, possibly because only this level of assessment required proponents to publicly respond to concerns submitted by government and the public on the key EIA document (i.e. a Supplement for Draft EIS's). This resulted in substantially protracted EIA processes, for example, by extending assessments of mineral and other projects to 5-10 years when previously assessments could be satisfactorily completed in 2-3 years.

The draft 2018 Environment Protection Regulations includes four tiers for EIA:

- Assessment by referral information [Division 3]
- Assessment by supplementary environmental report [Division 4]
- Assessment by environmental impact statement [Division 6]
- Assessment by inquiry [Division 7]

If EIA and approval procedures are applied consistently and efficiently by the regulators, incorporating evidence- and risk-based criteria to appropriately assign proposed developments to each of these EIA options, then the reformed EIA process should substantially reduce the time and resources required of both the government and proponents ito complete EIA and approvals processes.

The MCA NT also notes that the proposed new process generates an approval whereas the current process generates advice. How will the new process impact current processes for approvals of MMP's?

B. Components of the draft regulations that are of concern to the MCA NT

- ***Registration of Environmental Practitioners and Environmental Auditors*** **[Parts 8 and 9]**

The Regulations merely detail the process of professionals seeking to obtain registration as Environmental Practitioners or Auditors. They do not indicate if, for purposes of completing an EIA

and approvals process or in mandatory environmental monitoring or auditing, professionals must be registered practitioners or auditors. The supporting document for these provisions, however, Fact Sheet 12, page 7, indicates that the CEO of DENR may issue an environment protection notice and direct that a 'qualified person be engaged to undertake certain activities,' and that a 'qualified person' is

- **registered as an enviromental auditor in accordance with the draft Bill,**
- **registered as an environmental practitioner in accordance with the draft Bill, or**
- a person who has the qualifications and experience set out in the environment protection notice.

The MCA NT does not agree that the government should limit participation in auditing and other directed activities to those on the governments register. Many professionals have decades of experience and expertise and would be completely competent to undertake such work. The Bill should make explicit that environment protection notices can recognise a 'qualified person' as someone whose qualifications, experience and expertise are adequate and appropriate for the purposes of the notice.

The MCA NT does not support that 'qualified persons' under the act must be registered to prepare EIA documents, provide independent review of documents, provide advice on the EIA process, undertake an investigation or prepare or review any of the documents required in an EIA process. This is tantamount to establishing a 'closed shop.' Most companies in the minerals sector are global and use both internal and external consultants who are often not based in Australia, to provide advice to the government and underpin sound decision-making. (The Vista Gold Mount Todd proposal, for example, used experts based in Denver Colorado (USA) to develop much of the EIS documentation.)

Recommendation 21: The Bill and regulations should be revised to make explicit that environment protection notices can recognise a 'qualified person' as someone whose qualifications, experience and expertise are adequate and appropriate for the purposes of the notice and to prepare EIA documents, provide independent review of documents, provide advice on the EIA process, undertake an investigation or prepare or review any of the documents required in an EIA process.

- ***Standard terms of reference*** **[Regulation 3, Regulations 74-81]**

Regulation 74 indicates that the NT EPA may prepare standard terms of reference for projects assessed at the EIS or Inquiry level, in relation to particular industries, kinds of actions or kinds of impacts. The intent is to streamline assessment processes and timelines by allowing the NT EPA to apply standard terms of reference rather than preparing new terms of reference for every development proposal; however, these must be appropriate for any proposal to which they are being applied. For this reason, the government must engage and consult with industry and other stakeholders in the development of standard terms of reference.

Recommendation 22: The regulations should be revised to provide more descriptive detail about standard terms of reference and government should consult with industry and other stakeholder groups to 'ground-truth' these when they are being developed and ensure they are risk- and evidence-based, and practical.

Regulation 74(4) indicates that standard terms of reference **must include an assessment period of not less than 3 years for completed the draft EIS or Inquiry Report.'** The MCA NT believes that the regulations should not set a minimum time for EIS's or Inquiries to be completed. This would artificially prolong an EIA process that could conceivably be completed in 1-2 years, and be counter to the objective of the new Act and Regulations to streamline the assessment process.

Recommendation 23: Regulation 74(4) should be removed, so that no minimum period for an EIS or Assessment by Inquiry processes be set.

- ***Standard approval conditions*** **[Part 6, Regulations 120-134]**

Regulation 120 explains that the NT EPA may prepare standard conditions of environmental approval for particular activities, particular industries or processes, actions within different areas or specific environmental impacts. The intent is to streamline approval processes by allowing the NT EPA to capture the kinds of conditions that are relevant and transferrable across different projects based on a similar risk profile for particular actions, processes or environmental impacts; however, it is critically important that they be appropriate when they are attached to environmental approvals.

More descriptive detail should be in the regulations, and the government must engage and consult with industry and other stakeholders when the NT EPA drafts these, to allow stakeholders to 'ground-truth' what is being proposed and ensure that they are risk- and evidence-based and practical.

Recommendation 24: The Bill and regulations should be revised to provide more descriptive detail about standard approval conditions and government should consult with industry and other stakeholder groups to 'ground-truth' these and ensure they are risk- and evidence-based, and practical.

- ***Fee for service*** **[Regulation 50]**

The MCA NT does not support the imposition of essentially a 'fee for service' for the NT EPA to charge proponents for fulfilling its statutory responsibilities in relation to EIA, including if the NT EPA needs to engage experts to provide advice. If adopted, however, proponents should be charged the minimum fees associated with **efficient administrative processes**, as per the EPBC Act Cost Recovery Implementation Statement (2016-17):

> *Cost recovery more equitably shares the costs of protecting the environment between the community and those who derive a private benefit from the ability to apply for approval to undertake an activity otherwise prohibited by the EPBC Act. Cost recovery, by providing a source of funding related to the actual amount of assessment activity undertaken in the Department, improves the Department's ability to respond to changes in demand for its services. Consistent with the Cost Recovery Guidelines,* ***the fees charged reflect the efficient provision of services*** *under the EPBC Act – that is, work conducted to fulfil legislative requirements within statutory timeframes. Cost recovery provides incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning, as this may reduce the level of assessment required and therefore the costs payable.*

Historically, the NT EPA has requested 'peer reviews' of technical reports on matters to be funded and managed by the proponent. This effectivel provided an assessment by an expert at no cost to the NT EPA. The MCA NT does not believe that this approach should be replaced by a process that has the NT EPA managing setting the terms of reference for reviews but the proponent having to finance it. Furthermore, should the costs be simply charged to the proponent, there would be little incentive to use external review judiciously.

Recommendation 25: if the regulations empower the NT EPA to charge a fee for providing services in support of the EIA processes it oversees, then it must be able to demonstrate that these processes are efficient and therefore charges to a proponent will be the minimum required for these processes to be completed. The costs recovered should be offset by a reduction of taxes. Otherwise this duplicates cost recovery.

5 ADDITIONAL CONCERNS AND QUESTIONS FOR DENR

1. Regulatory impact statement (RIS)

- Information in ***The Northern Territory Government Regulation-Making Framework (November 2017)*** suggests that a Regulatory Impact Statement (RIS) should have been done before the new Environment Protection Bill and Regulations were drafted and published.
- The RIS should have developed and examined a range of feasible policy options to address a perceived need to amend or create new legislation in addition to demonstrating the impact of the new regulation on the community, **including industry**. The RIS is also intended to demonstrate a net public benefit (i.e. benefits outweigh costs); therefore, the RIS needs to indicate what costs the new legislation will impose on both the government to implement and industry to comply.
- The RIS should also include a comparison to similar regulatory frameworks and legislation in other jurisdictions, primarily to demonstrate how proposed reforms would bring the Territory into line with other jurisdictions.
- The RIS needs to provide adequate information on 'how new legislation would be implemented and how the operation/effectiveness of the legislation will be reviewed and assessed,' i.e. what KPI's will be used to demonstrate the effectiveness of the new legislation in meeting the needs for which the environmental regulatory reform program was established.

Recommendation 26: If it has not already done so, the government should complete a regulatory impact statement (RIS) on the new legislation (Act and Regulations), and publish results. The RIS needs to include a range of alternatives to drafting new legislation to address a perceived or actual problem/deficiency and demonstrate why the new legislation is the best option in addition to costs to government, business and industry.

Recommendation 27: The RIS should include a comparison to similar regulatory frameworks and legislation in other jurisdictions, to demonstrate how proposed reforms would bring the Territory into into line with other jurisdictions.

Recommendation 28: The RIS should provide adequate information on how the new legislation would be implemented and reviewed, including KPIs to judge if the intended benefits of the new environmental regulatory framework are being achieved.

2. Government to demonstrate how reforms will be implemented

- If the Bill and Regulations are passed, the government should convene industry sector-specific workshops to demonstrate how the reforms will be implemented and to field questions.
- **Recommendation 29: If and when the legislation is passed, the government should convene industry sector-specific workshops to demonstrate how the reforms will be implemented and to field questions.**

3. Environmental bonds and levies

- Will these be additional to rehab security bonds for mineral projects? Refundable? Held for rehab or to be used for more general environmental benefit, e.g. research and addressing sites with environmental legacy issues.

- Why should industry pay for this or the failings of historic/legacy developments or ineffective environmental regulation by the NTG and/or Commonwealth or for generic research to extend the government's current knowledge-base?
- Historically, a component of taxes collected has been utilised for the long-term management of land. Unless there is a reduction in taxation, there should not be an increase / adoption of a new tax.

4. Further Reforms – Stage 2 to incorporate changes to the *Mining Management Act* and *Water Act,* and inclusion of regulation of impacts from mining.

- Why is regulation of the mining sector to be captured in Stage 2 of development of the *EP Act* and no other industries that have the potential for significant environmental impacts?
- If changes to the regulations are required, then they must be applied to all industries and not just the minerals sector.

5. Early Refusal in Regulations, Part 4 – Referral of proposed actions

- WA reports having some categories of developments that community groups and NGOs can be widely opposed to, preventing some projects from having the procedural fairness of at least going through an EIA process to determine if they can proceed without unacceptable environmental impacts. In the NT, a good example of this is what happened with fracking; therefore, MCA NT is wary in relation to this provision.

6. Simplified EIA process – Activity-based referrals, Location-based referrals and Significance-based referrals.

- What are the kinds of activities the NTG is considering, e.g. is it possible that it would be as broadly defined as 'any mining activity'? Or something more specific, e.g. Uranium mine, to mirror the *EPBC Act*?

7. What are the financial provisions?

- *"The payment of an environmental protection bond and/or levy <u>may</u> be imposed as a condition of an environmental approval"*
  - What criteria will the Minister use in determining if a bond and/or levy will be imposed?
  - For mineral projects, will this just be the existing rehabilitation security bond and levy (for legacy mine rehab)? Or will the EP Act allow an ADDITIONAL BOND and LEVY to be imposed on a mining project?
  - Will the bond be refundable once a closure certificate is obtained, or portion of it returned with progressive rehabilitation?
- *"An environment protection levy is <u>tax</u> paid to the government, that can be used for diverse purposes, e.g. undertaking research to support <u>an industry</u> by identifying methods to manage their environmental impacts"*
  - Why should a company have to pay for research to increase the government's understanding of potential impacts from activities done by its industry? Companies already expend substantial funds to complete baseline and other data-gathering requirements for significant projects, and these data are given to the government.
  - As it is a TAX, monies collected will not be refunded, correct?
- *"To remediate and rehabilitate the environment"*

- Why should a company be held responsible to remediate and rehabilitate damage done by other projects, possibly even projects in other industries, e.g. agriculture, especially a company that has an exemplary record in satisfactory rehabilitation of its own projects?

- **If the Minister establishes an environment protection fund, then regulations must require that funds collected from industry are acquitted annually, with reports made public, and the administering body must publish plans for strategic expenditure of such funds, e.g. in the next 1-5 years.**

  - Note: DPIR has collected 5 years' worth of Rehabilitation Bond Levies from the mining sector and has never acquitted the funds nor prepared a strategic expenditure plan for these funds. Companies have a right to know how its levy payments have been used, including confirmation that they are and have been applied to on-ground works and administrative costs to run the Legacy Mines Unit.

- "Environment Protection Fund". States that the purpose is to hold money 'for environmental protection and industry assistance purposes." To what kinds of industry "assistance" does this refer? Companies would rather NOT pay a Levy and instead use these funds to assist itself!

8. **Section 82 (p 31) – Statement of unacceptable impact. The NT EPA must provide the following to the Minister with a statement of unacceptable impact: (a) any submissions received by the NT EPA or statutory decision-maker on the draft statement of unacceptable impact under the regulations to the extent that those submissions have NOT been accepted by the NT EPA.**

   - What is the purpose of this? It suggests that the NT EPA's decision that some submissions are not acceptable (in terms of relevance or quality of the EPA's assessment) cannot be trusted and so all submissions, including the unacceptable ones, need to be forwarded to the Minister.

9. **Section 123 (p 47) – Amount of bond (3) The Minister may determine the nature of the bond to be provided which may include: (a) cash; or (b) bank guarantee.**

   - Are these the ONLY options? Jurisdictions are beginning to accept rehabilitation securities in the form of insured bonds, which are more industry-friendly while still making available the required amount to be lodged. Because of the evolving nature of this issue, could this provision be moved out of the Bill and dealt with as a gazetted policy, more responsive to potential changes?

   - The minerals sector should be able to provide a 'Tier 1 security instrument.' Tier 1 providers are often much larger than the mining company and less likely to go into administration.)

10. **Section 127 (p 48) – Environment protection levy. (2) The environment protection levy is a tax that is levied to provide funding for the following purposes:**

    (a) the taking of actions in the event of an environmental emergency;
    (b) the carrying out of works for the rehabilitation of the environment;
    (c) the carrying out of works for the remediation of environmental harm;
    (d) research into the environmental impacts of particular industries
    (e) research into the management of the environmental impacts of particular industries; and
    (f) other activities relating to protecting or enhancing the environment.

    - Why is industry being asked to foot the bill for these things that should be financed by the NTG? Does any other jurisdiction in Australia have this kind of levy? For what government purpose are taxes collected?

11. **Section 128 (p 49) – Liability for environment protection levy. An environment protection levy must not be imposed on a person for a purpose if a levy has been imposed on the person under another Act for a similar purpose.**

    - A similar provision should apply to **rehabilitation security bonds.**

12. **Section 129 (p 49) – Amount of Levy. (3) The regulations may provide for the amount of the environment protection levy and the method of calculating the levy to be different in relation to different classes of actions or industries or circumstances.**

    - The regulations don't provide an amount or calculator.

13. **Sections 138-140 (pp 53-55) – Environmental audit requirements. These all empower the NT EPA to direct an operator to do an environmental audit of one or more of its activities.**

    - Doesn't the Act charge the CEO of DENR with responsibility for monitoring compliance, and, if so, why isn't the NTG paying for the audit? Essentially, this provision is saying that proponents are responsible for auditing themselves and footing the bill for it. Does any other jurisdiction do this?

14. **Part 12 Civil Proceedings, Division 1 Injunctions and other orders, Section 214 (p 87) Who may bring proceedings.**

    - Can consultant or DENR explain on what basis an 'eligible applicant' can apply to the court for an injunction in relation to an 'alleged act or omission that contravenes the EP Act?
    - Note: the definition of 'eligible applicant' is the same as the original definition in the context of third party appeals for merits reviews. Does the NTG's reversal of position on third party appeals also apply here, i.e. only proponents and people who are directly impacted by an action or omission contravening the *EP Act* have standing to apply for an injunction?

15. **Part 14 Review of decisions. 254-255 Standing for judicial review and Review by Civil and Administrative Tribunal.**

    - Note that these provisions will be removed or revised to restrict judicial and merits reviews to proponents, landowners and only those who can demonstrate likely or possible impact by development of an approved project.

6 FURTHER INFORMATION

For further information regarding this submission, please contact Dr Janice Warren, Manager Environment Policy at the Minerals Council of Australia, Northern Territory Division, on 08 8981 4486.