GEOLOGICAL, EXPLORATION AND MINING SERVICES ASSOCIATION NT Inc.

ABN: 18819195334

trading as

GEMSA NT

SUPPORTING MINERAL EXPLORERS IN AUSTRALIA'S NORTHERN TERRITORY

GEMSA NT comments on NTG Discussion Paper:

Environmental Chain of Responsibility Laws

Environmental regulatory reform information paper (herein referred to as "The Information Paper")

Foreword:
GEMSA NT

The Geological, Exploration and Mining Services Association NT Inc (GEMSA NT) was incorporated in June 2020 by NT-resident service providers and suppliers to the NT mineral exploration sector, in response to our concerns about the impact on our livelihoods from the dwindling greenfields, or grassroots, exploration sector, and the shrinking roles within it for locally resident businesses. Grassroots exploration in the NT is in the doldrums and needs to be revitalised if the NT's economic recovery is to be achieved and sustained. We will explain the basis of these beliefs in this Foreword.

Reasons for GEMSA NT submission

GEMSA NT is fully aligned with the goals of the Territory Economic Reconstruction Commission's final report to:

- Create jobs in the near, medium, and long term.
- Attract private investment.
- Support current and emerging industries.
- Build on the Territory's competitive advantages, and;
- Unlock the potential of the Territory's regions.

GEMSA NT welcomes Government support for development of the pipeline of projects that underpin the Territory Economic Reconstruction Commission's "Operation Rebound", and we also need to point out that those projects that have reached readiness for development are the product of a process that commences with **grassroots exploration**. Those of us who work in and service that sector are best equipped to comment on this early-stage exploration, which is at the very front end of the development of new mining districts. Our interest in The Information Paper relates primarily to how we believe the Chain of Responsibility proposals will impact the attraction of risk investment to the Territory to stimulate grassroots exploration. This is not only a matter of creating government funded pre-competitive data to help stimulate applications for exploration title. The final decision to make a risk investment in grassroots exploration generally boils down to the amount of red and green tape that potential investors perceive they will encounter should they risk investing in a particular jurisdiction.

There is an exploration boom going on in Australia (and more widely) at present, and exploration expenditures are riding a crest. It is at times like this that risk- takers are attracted to do things they usually come to regret in less heady times. However, from our members' personal experiences over this year, they have generally not yet reached the fever pitch that will cause some risk investors to overlook the perceived pitfalls of investment in grassroots exploration in the NT. **The reasons they are giving for not taking on these projects that if they were in WA, would be being drilled now, is essentially concerns about the uncertainty of regulation here and the anticipated difficulties and guaranteed delays in obtaining exploration and development permits.**

In GEMSA NT's last major submission on Environmental regulatory reform, we highlighted that The NT occupies about 17.5% of Australia's mainland area, yet in the Sept 2020 Quarter accounted for just 3.8% of Australian quarterly mineral exploration expenditure of $745million (all these figures are based on ABS quarterly reports

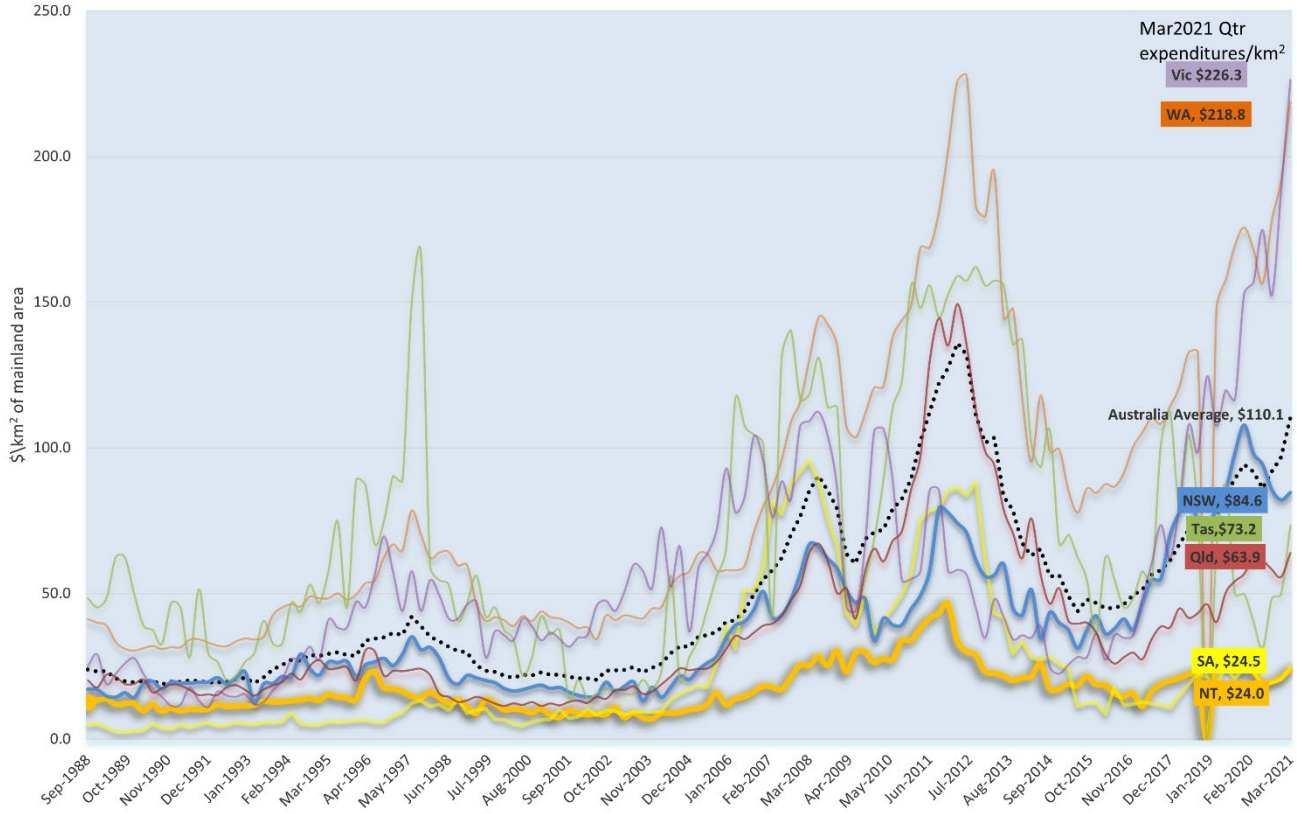
compiled from all active exploration titleholders in Australia. These statistics have been gathered since Q1, 1974. see: https://www.abs.gov.au/statistics/industry/mining/mineral-and-petroleum-exploration-australia/latest-release). For the latest available quarter, March 2021, the percentage is still 3.8%, of an Australian total which is now $843.9 Million, but NT exploration expenditure per km^2 has now re-claimed bottom spot of all Australian reporting jurisdictions, as shown in the updated graph of historic expenditures per km^2 for the various jurisdictions (Figure 1).

If the NT had Australian average mineral exploration expenditure per km^2, NT exploration expenditure for the March Quarter would have been $148 million, not the miserable $32.1 million that it was. The expenditure on grassroots exploration is even more worrying.

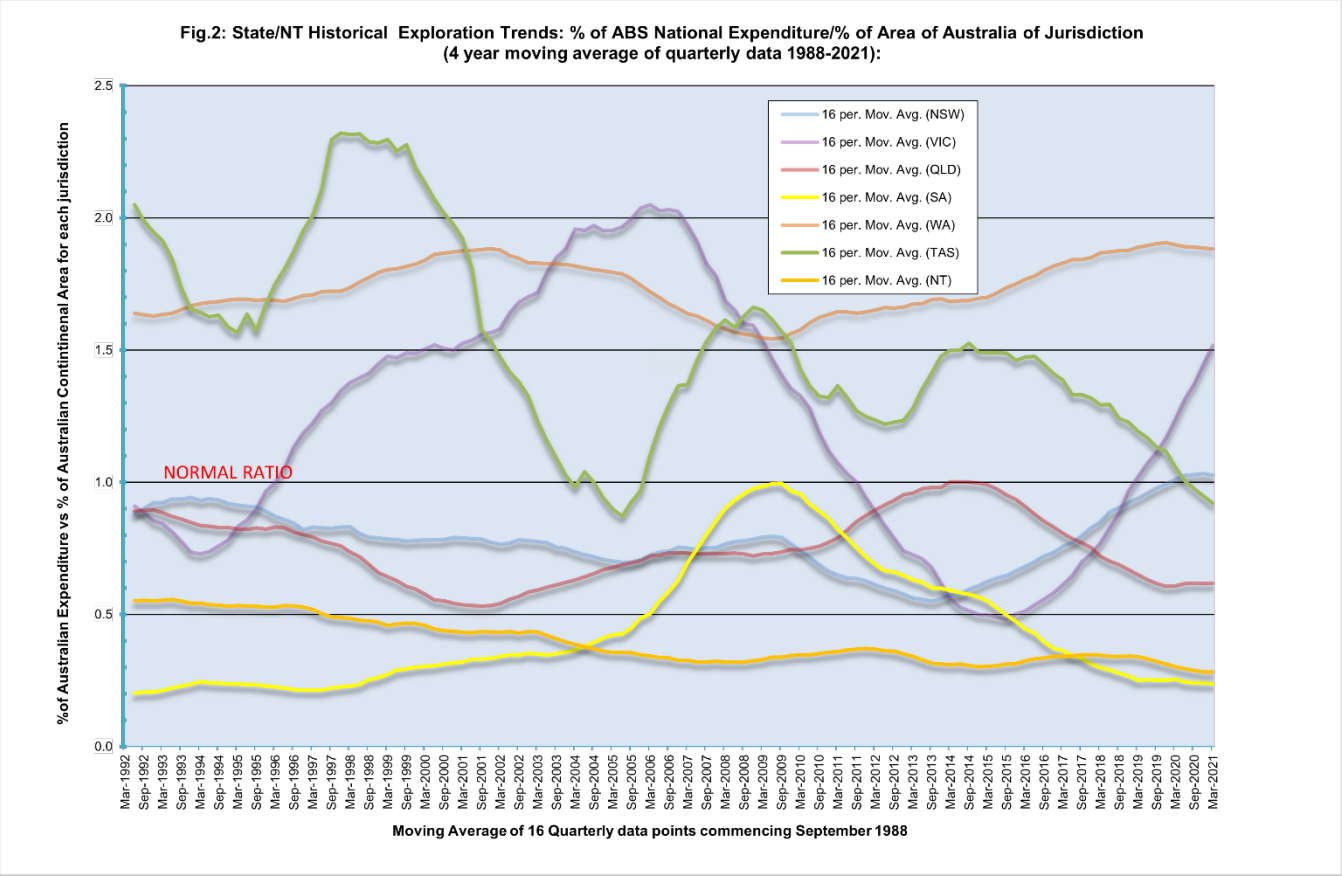
GEMSA NT's latest analysis of the ABS figures, presented in Figure 2, has been prepared to identify jurisdiction-specific trends more easily in exploration expenditure with time. Further work will try to link these trends to events such as market trends for specific commodities that are endowed in particular regions, and other jurisdiction-specific effects such as the introduction of new state/NT legislation. Fig.2 plots the ratio of percent of Australian exploration expenditure versus percentage of Australia's continental land mass for each jurisdiction with time, smoothed by applying a 4-year moving average (an electoral cycle) to the data since jurisdictional records became available in September 1988 (after the Black Monday market crash of 19th October 1987, which had a shattering effect on mineral exploration finance via stock markets).

We believe that Fig.2 shows clear trends that should be of interest to lawmakers in all Australian jurisdictions: some can be proud of how their state is performing, while others should perhaps be examining where they are going wrong if indeed a thriving mineral resource industry is their goal, as most jurisdictions, including our own, claim. Pretty much the same story is told in Figures 1 and 2, but we think it is clearer in Figure 2 that there are some very different performances being returned by our state and NT governments.

Fig.1: Quarterly Mineral Exploration Expenditure per Km^2 in Australian States for the last 32years



GEMSA NT hopes this stark comparison is enough to shake our leaders out of the complacency that we can improve the future of our resource sector by continuing the admirable policies that have resulted in the NT's esteemed reputation for trying to foster mineral exploration activity, and which GEMSA NT fully supports. Huge efforts have been made by both the NT and Federal governments to get explorers interested in coming here. But the figures show the big exploration expenditures and programmes continue to bypass us. Why is the NT heading down to the bottom of the pile?



GEMSA NT believes that this is a result of factors that particularly impact the NT mining sector. While Land Access is already a significant issue, particularly the delays in negotiating and obtaining access to that about 50% of the NT that is Aboriginal Freehold Land, other regulatory imposts, perhaps more especially the management of those imposts, have taken an inexorably increasing toll on the NT's share of grassroots exploration expenditures in recent decades.

Effective grassroots mineral exploration expenditure is critical to the maintenance of a pipeline of advanced mineral development projects to sustain long term economic growth, and grassroots exploration expenditure has other more immediate benefits. GEMSA NT's aim is to see as much of this expenditure on grassroots mineral exploration as possible flowing to local workers and businesses, frequently in remote parts of the NT that often miss out on the benefits of economic development. Often the beneficiaries of this exploration are community enterprises on Aboriginal Land and Lessees on Pastoral Land, through provision of fuel, supplies, accommodation, plant hire, and other goods and services.

Any review of the reasons for this dismal exploration performance, particularly in grassroots exploration, makes it clear that the NT does not enjoy a favourable reputation with that special breed of investors that is prepared to back this highest risk sector of the mining industry. That is, that the odds dealt by Mother Nature in terms of mineral prospectivity are compounded immensely by the human elements of delays, difficulties, and inefficiencies with permitting, and increasingly, the cost of holding mineral title during these delays. The NT is frankly seen as a high-risk environment by all but a few of these professional risk-takers. This fact emerges in the annual surveys of

industry executives by both Mining Journal and The Fraser Institute, but the result is also apparent in the ABS statistics of exploration expenditure that we have used to illustrate the situation.

Chain of Responsibility Origins

The Chain of Responsibility proposals, as well as many of the other proposed regulatory reforms seem to be modelled on recent legislative changes in Queensland. It is appropriate for us therefore to look at how Queensland exploration expenditure has fared in the time since this legislation has been in place. We have previously pointed out that Queensland has in recent years seen a steady fall relative to the average exploration expenditure for Australia of over 30% between 2015 and 2020, and there is no real improvement in 2021 so far, despite the boom under way in mineral exploration globally. This drop is obviously the result of local factors, and our inquiries in Queensland suggest that it is State policies, and their implementation that have resulted in this downturn. GEMSA NT doubts that Queensland is the place to look to solve the NT's problems. The Information Paper also observes that Victoria has introduced similar legislation as part of environmental law reforms there. These have come into effect on 1 July 2021. This will be most interesting to follow, as Victoria is in our view the standout resurrection of this exploration boom (being followed up by NSW). As will be seen in the Figures above, Victoria now enjoys a level of exploration intensity ($226.30/km^2, that is 3.5 times the Queensland figure, and 9.4 times what it is in the NT) which is higher even than WA in the March Quarter. If Victoria's position is maintained over time in the face of the newly introduced legislation, it will be better evidence that modern environmental laws do not impede exploration than the Queensland figures seem to demonstrate.

Do we need CoR legislation?

It is easy to overlook the dual role that Governments play in the mineral resource sector. On one hand they are responsible to manage the resources and regulate their extraction on behalf of their citizens, while on the other they are major beneficiaries of mining activities through the fees, royalties and taxes that apply to all extractive operations. In fact, except perhaps for extraordinary situations like those being enjoyed at present by some Pilbara iron ore miners, many studies demonstrate that governments, through fees, royalties, rates and taxes on the mining enterprises and dependent employees, contractors, and suppliers, are the major financial beneficiaries of most mining operations, much more so than shareholders.

It might be argued that if the regulators get the regulation wrong, it is they that should be liable, not the producer who has paid his way and complied with requirements over the life of the operation, including lodging performance bonds set by regulators to cover end of mine rehabilitation.

From the first stage of exploration to the beyond the end of rehabilitation, governments collect fees, royalties, rates and taxes, and hold bonds or securities against non-performance of the operators. If, with all that protection, and having derived a great deal of no-risk revenue from what are, for the owners, at least initially, high risk enterprises, the regulation was inadequate to ensure that environmental damage is rectified, existing laws already provide a fund to protect the public via the annual legacy mines levy on security bonds.

Another layer of cover for legislators by CoR legislation, to hunt down responsible persons not liable under existing laws seems on the face of it to be draconian, unnecessary and has the potential to be used vindictively against people who must then experience the stress and expense of defending themselves against these accusations.

Specific Issues with CoR from the Information Paper

GEMSA NT members have raised the following issues with the proposals in the Information Paper. We have attempted to keep these down to specific points and to edit out duplication.

Retrospective Operation

The Information Paper doesn't mention whether CoR law would have any retrospective operation. In fairness, the CoR law should not have retrospective operation. This includes, that the CoR law should

not apply to any mining activities that are already the subject of an approval. Otherwise, the CoR law would represent a shifting of the "goalposts" important for matters such as ownership structures and approval documentation submitted for a project before an approval is given.

Duplication with existing security bonding regime

The Information Paper notes that:

> "*Environmental CoR laws are a compliance and enforcement tool and therefore operate outside of, and independently from, other environmental financial regulatory mechanisms such as environmental bonds, mining securities, levies, fees or residual risks payments*."

However, section 43(2) of the *Mining Management Act (NT)* specifies the purpose of a security bond for mining activities is to secure:

1. the operator's obligation to comply with the Mining Management Act and the Authorisation;
2. the payment of costs and expenses in relation to the Minister taking an action to prevent, minimise or rectify environmental harm caused by mining activities on or outside the mining site:
3. the payment of costs and expenses in relation to the Minister taking an action to complete rehabilitation of the mining site.

These existing security bond requirements ensure that the Minister is in a position to rectify any issues with unrehabilitated mining sites without any cost to the public. This is the case regardless of insolvency, or lack of financial capacity, in the operating company.

As such, the stated aim of the CoR laws to protect taxpayers from inheriting corporate liabilities has already been addressed in the current terms of the *Mining Management Act* and does not need duplication by the introduction of CoR laws.

If the duplication cannot be avoided, it would be the position of a "related person" (e.g. a director of the operator) that the Minister should first have recourse to the security bond provided by the operator before any personal liability (which threatens personal assets) is sought to be imposed against the person.

Duplication with existing executive officer criminal liability

The *Mining Management Act (NT)* already extends criminal liability of a body corporate to an executive officer of the body corporate in a broad range of circumstances (see section 77A). These laws make, for example, a director of an operating company personally liable for an offence based on the actions of the company.

The Information Paper notes that:

> "*The [CoR] laws are intended to address instances where corporate law fails to prevent relevant interested parties from avoiding or limiting liabilities for environmental harm that has been caused by clear occurrences of undesirable or excessive risk-taking behaviour*."

It appears that the appropriate mechanism for addressing any such behaviour already exists in the criminal liability provisions contained in the *Mining Management Act* and should not be duplicated by the introduction of CoR laws.

In response to the criminal liability provisions, the Information Paper notes that:

> "*These types of liabilities are limited to where court proceedings are brought for an alleged offence by the company. They are generally ineffective in ensuring that companies complete required remediation or rehabilitation*."

If that is the case, then it is difficult to see how CoR laws will improve the outcomes.

Definitions of "related person", relevant connection" and "high risk company"

The Information Paper discusses proposed definitions of key terms "related person", relevant connection" and "high risk company".

Each of these definitions involve **subjective analysis** and remain unclear about their application in real life situations. Examples of their application, including in a mineral exploration context, should be provided for industry consultation.

This concern is increased by the fact that the Information Paper proposes that decision making powers under the CoR laws are held by the CEO of the Department. It is **inappropriate for a power of this kind to be held below Ministerial level, in order to ensure political accountability for decision-making**.

Comments on a Section-by-section basis

1. Introduction

GEMSA NT finds the prioritisation of CoR over the many other proposed reforms in the White Paper to be a surprising development, as it was not considered a priority area in the original White Paper.
The selective targeting of mining as a first priority has GEMSA NT concerned. Our earlier comment about being the 'road accident dummy' is again relevant.
It could be argued that some of these other activities impact on a far larger land area when compared to that impacted by exploration and mining. Also, recent NTG communications appear to be actively promoting other activities such as land clearing by Pastoralists

We are in the mining industry, not the hydrocarbon sector. The nature of each industry is completely different, and the regulatory environment needs to adjust accordingly. No Pepper inquiry has been held on the activities of the Mining industry, and the findings should not be simply imposed on our industry without a formal opportunity to answer any criticisms of the mining industry derived from an inquiry into hydraulic fracturing.
Compliance costs can have a more significant impact on the more restricted budgets of mineral exploration. Timeframes are also considerably longer (decades as opposed to years and the economics of mineral commodities is much more variable).
It is yet to be determined whether CoR legislation for this purpose will actually be effective. Why is the existing legislation ineffective and why haven't the NTG responded to this issue?

The detail in the original White Paper was scant and the concept was seen by GEMSA NT members on initial review as being 'draconian' by nature. GEMSA NT remains unconvinced that legislation will be effective and that it will capture serious offenders. It is certainly not clear to us that the examples of bad behaviour we cited in our previous response would have been caught by these proposals. Until this is clearly the case GEMSA NT believes the costs outweigh the likely benefits.

If the legislation is retrospective to include existing operations (including those on care and maintenance) it is clearly unfair as we observed above. If it is not, it expresses no confidence in the ability of NTG to introduce effective legislation in this area.

2. Chain of responsibility

Environmental performance is a completely different issue to a working transport industry with this need for workplace safety reform; this is comparing apples to oranges. We believe the non-mining examples cited probably have more need for such legislation than the already tightly regulated and perhaps even over-monitored mining industry, with NTG drones buzzing operations to take clandestine footage of operations already. How could the errant polluter escape this surveillance regime?

There was a Royal Commission into the issues pertaining to workplace OH&S in the transport industry owing to industrial-scale negligence. There has not yet been a Royal Commission into breaches in Environmental performance in the NT mining industry and if there were to be one, there is no guarantee it would find the existing regulatory regime inadequate, or that it would find that the solution is CoR legislation. GEMSA NT believes this is an unfair and unreasonable assessment of the contemporary environmental performance within the exploration and mining sector in the NT.

It appears as an industry, we are again, being judged by past actions which were endorsed by Government at that point in history. In fact, some of the more outstanding examples of mining industry pollution had a Chain of Responsibility that might lead back to Commonwealth government ministers (for example, Rum Jungle and El Sherana).

To equate the chain of responsibility in the transport sector with that in the mining industry, are we to assume that a similar standard will be applied to employers and employees, full-time, part-time, consultant or contract at all levels of the exploration and mining sector? How could these people be held responsible historically for subsequent environmental failings in a failed company? However, it remains unclear whether schemes of the Multiplex Resources Pty Ltd/ Yimuyn Manjerr Pty Ltd/ General Gold/ Pegasus type at Mount Todd, documented in GEMSA NT's earlier submission, would be caught by the proposed legislation. We have doubts that it would be, and that those who benefited would leave themselves legally liable for such a deliberate premeditated act. If those incidents are not caught, the legislation would be a farce, adding costs for all but not catching the real problems.

3. CoR in environmental law

Directors and executive officers are actually responsible for the performance of the Company. These officers are the only individuals who have the current working knowledge of the Companies' operating positions. These people generally have expensive Directors and Officers insurance paid for by the company: in other words, they are protected. Change the laws and the premium goes up.
Employees, consultants, and contractors do not have any insight into the operating situation, so cannot reasonably be held accountable.

GEMSA NT has concluded that NTG should attempt to review and update the existing mining legislation, before trying to introduce new legislation.
We must ask why the current environmental bonds, set, and held by, NTG, are not adequate, as this is the responsibility of the NTG to set them, and they should be sufficient to cover remediation costs.
It appears that this policy paper is referring to past situations, where the NTG approved activities and applied appropriate environmental bonds for that period. We appear to be again, being blamed for past performance which was approved by the NTG at that point in time. This situation is intended to be addressed by the levy on existing securities to fund legacy mine rehabilitation. If this scheme is not working (and it probably isn't) does installing this other fallback, especially with a 3-year sunset as implied actually do anything to resolve this?

If NTG is prepared to impose and accept royalties from mining operations, given their dual role, they are by nature, a stakeholder in the operations, and accept the level of risk involved in that operation and the royalties they derive from them.

All commercial operations (mining or otherwise) involve risk, so it is not possible for the NTG to accept the benefits of such an activity without also accepting an appropriate portion the responsibility for the risk.

GEMSA NT members are extremely concerned about the potential claw-back of a previous titleholder who may not have had any involvement or working knowledge of the performance of the new operator

4. Recent Consultation

This consultation was specifically, in reference to gas exploration using a new and controversial extraction method, not mineral exploration or mining using contemporary 'best industry practice' methods.

Current Mining Management legislation, if it is properly implemented and managed, will ensure that mining rehabilitation is conducted in a sound manner, consistent with contemporary standards. We do not believe that it is necessary or desirable to create another layer of "protection" that may have a doubtful capability to catch those who set out to avoid their obligations and profit from that. It also has the potential to "lumber" accusations on people pre-judged to have had some culpability for a past event, who then must prove they did not. This may be on people who have retired, with inadequate insurance cover for such events, and may present these people with life threatening levels of stress.

GEMSA NT also disputes that the introduction of CoR legislation is cost neutral to businesses. For instance, it has helped to increase the cost of Professional Indemnity insurance to Consultants and Contractors to the point that it has a marked effect on charge rates. GEMSA NT is actively investigating the quantitative effect of this, but it is not insignificant and introduces another layer of complexity to working in Queensland. Further details should be available soon.

5. Legislative Framework

We are nervous about the definitions, mode of operation, and placing decision making powers in the hands of CEOs rather than Ministers, as already detailed above.

Conclusion

GEMSA NT thinks that CoR legislation, overall, is a vexing issue for its members. This view has not been changed by the Information Paper from our views expressed in the earlier White Paper response. It opens real possibilities for political grandstanding, witch-hunts, and scape-goating of opponents or rivals. As conceivable targets of such legislation as "related persons" of many mining projects, should GEMSA NT members worry if even old age might not save them from being hauled from their retirement home wheelchairs off to prison as the last man standing from some past project gone wrong in the future? If this sort of legislation is necessary, it should also apply to the actions and inactions of governments as well as private citizens. We have pointed out that Governments are major low risk beneficiaries of the high-risk business of making money from mining mineral resources. They have a double role to play, of regulators as well as beneficiaries. If they do a bad job of regulating, do they deserve the opportunity to select someone else to blame for it?

Can we find the people who introduced cane toads to Australia, or gamba grass, or for that matter, rabbits, or lantana or prickly pear or cats? Or perhaps even horses, sheep and cattle? We cannot think of any mining projects that have created the environmental liabilities that those people did.

-Geoff Eupene and Gary Price, with input from GEMSA NT members, Nick Johansen, Tanya Cole and Ray Wooldridge.