Submission to the Northern Territory Department of Environment and Natural Resources:

Draft Environment Protection Regulations 2019

December 2019

1. Introduction

1.1 Overview

The Northern Land Council (**NLC**) welcomes the opportunity to comment on the Draft Environment Protection Regulations 2019 (**Regulations**). The NLC notes the Draft Regulations will contain much of the detail for the proposed new environment assessment regime and therefore it is critical that the Regulations enhance transparency, provide for community input in a culturally appropriate manner and lead to assessments that are robust and prevent adverse impacts on the unique Northern Territory environment.

The NLC congratulates the Northern Territory Government on the preparation of the Regulations. The existing regulatory framework governing environmental assessment and protection in the Northern Territory is widely acknowledged to be inadequate and in desperate need of reform. Persistent, critical issues include a lack of access to information about environmental decision-making, and an inability of the community and affected individuals to genuinely participate in this process. A further issue is the absence of genuine and robust regulatory oversight and enforcement.

As noted throughout the environmental regulatory reform process, previous reviews and submissions by the NLC and the CLC have raised a number of issues. The NLC continues to emphasise its previous submissions. There is widespread dissatisfaction with the operation of the current system, including comment on its failings by the NT Environment Protection Authority itself (**NT EPA**). The Regulations present an opportunity to implement a system that addresses existing shortcomings and effectively supports Aboriginal people in caring for their land and waters.

Aboriginal people are significant stakeholders in the reform process. They make up over 30 per cent of the Northern Territory population and hold extensive rights and interests, including freehold tenure over more than 50 per cent of the Northern Territory's land mass and 85 per cent of its coastline, with much of the remaining land subject to native title.

This highlights the significant role for Aboriginal people as owners, managers and major investors in policy and programs relevant to these cultural, economic, social and environmental interests.

In addition, 78 per cent of Aboriginal people in the Northern Territory live in remote areas. Aboriginal communities in remote areas are disproportionately impacted by significant environmental problems such as legacy mines. Further, Aboriginal people living in remote communities often face structural and systemic barriers that make scrutiny of mining operations and government decisions

difficult. The NT's unique context in this regard makes transparency and a robust regulatory framework in relation to environmental operations all the more important.

1.2 About the Northern Land Council

The NLC was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**), the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas.

A key function of the NLC is to express the wishes and protect the interests of traditional Aboriginal owners throughout its region.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the land councils. The NLC is also a Native Title Representative Body under the *Native Title Act 1993* (Cth) (**Native Title Act**).

The NLC represents more than 36,000 Aboriginal people. Within its jurisdiction, the NLC assists Traditional Owners[1] by providing services in its key output areas of land, sea and water management; land acquisition; minerals and petroleum; community development; Aboriginal land trust administration; native title services; advocacy; information and policy advice. Relevant to this submission is a responsibility to protect the traditional rights and interests of Traditional Owners with interests over the area of the NLC, which is constituted by more than 210,000 square kilometres of the land mass of the Northern Territory and 85 per cent of its coastline.

The NLC's vision is for a Territory in which the rights and responsibilities of every Traditional Aboriginal Owner are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas and intellectual property. Our mission is to assist Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas, through strong leadership, advocacy, industry engagement and management.

[1] For the purposes of this submission, the term Traditional Owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), native title holders (as defined in the *Native Title Act 1993* (Cth)) and those with a traditional interest in the lands and waters that make up the NLC's region.

2. General comments

2.1 Key requirements

The NLC strongly supports and welcomes:

- the inclusion of public consultation at each relevant stage in the proposed environmental impact assessment and approval process;
- 'stop the clock' provisions at each stage in the assessment and approval process;
- the right to terminate the assessment process;
- requirements to consider and/or respond to submissions; and
- requirements to publish throughout the assessment and approval process (including publication of the reasons for decisions).

Recommendation 1: Retain provisions in the Regulations relating to public consultation (see, eg, regs 11, 15, 51), 'stopping the clock' (see, eg, regs 77(4), 85), termination of assessment (reg 87), considering and responding to submissions (see, eg, regs 51, 55(c)), and publishing documentation and reasons for decisions (see, eg, reg 50).

2.2 Environmental Impact Assessment Timelines

2.2.1 Overview

While the NLC understands fixed time periods have been included in line with recommendations of the Productivity Commission's 2013 report on *Major Project Development Assessment Processes*, and that they provide a level of certainty to proponents, we believe the timelines as they stand do not adequately take into account the range and complexity of projects likely to be assessed through this process. In light of this, the NLC proposes a framework with timelines based on the level of complexity of the project and proportionate to the nature of the risks. This could be assessed, for example, on whether any referral triggers apply; the number of factors and/or environmental objectives that are relevant; or the range of matters to be included in the Environmental Impact Assessment under regulation 76.

During the Scrutiny Committee review of the draft *Environment Protection Bill 2019* (NT), the timeframe for the Minister to make an environmental approval decision was considered. Responding to arguments made in submissions (including the NLC-CLC submission) that the Minister should have discretion to extend the timeframe, the Department advised that because the NT EPA was providing expert advice to the Minister, the risks of 'unintended and damaging environmental consequences' were

low.[2] It is therefore particularly important that the NT EPA be given enough time to undertake this expert assessment to ensure optimal advice is provided to the Minister. As such, the timelines under regulation 160, the period for providing an assessment report, should also be variable according to the complexity of the project. Regulation 160 should also enable the NT EPA to extend the *required period* of its own accord based on public comments received in relation to the assessment.

2.2.2 Public Consultation and Comments

Timelines for public consultation must allow for factors such as cultural practices, weather and the logistics of consulting in remote areas, as well as for land councils to meet their obligations around consultations pursuant to the Land Rights and Native Title Acts. The public consultation period needs to respect the fact that Indigenous peoples may need time to reach consensus.

In the case of public comment periods, while the proposed timelines may be adequate to comment on a relatively straight-forward project in Darwin, they may be completely inadequate for a complex application for a project in a remote area with wide-ranging ecological, social, cultural and economic impacts. At various stages throughout the environmental assessment process, written comments must be received 'within the comment period specified in the notice', see for example regulation 21(1)(b). The NLC recommends that the comment period specified in the notice account for reasonable requests to extend this time. The NLC notes that proponents are given the option to extend the submission period for draft environmental impact statements pursuant to regulation 126 and for reports requested under regulations 97 and 137. Therefore, flexible timelines should extended to interested individuals, under certain circumstances, when making a written submission about a proposed project.

2.2.3 NT EPA Assessment Periods

For similar reasons, the NLC is of the view that there should be a degree of flexibility applied to the current timeframe for the NT EPA to recommence the assessment process following receipt of expert advice or opinion. The current requirement for the NT EPA to recommence within 10 business days following receipt of information/advice, for example under regulation 85 'suspension of assessment process if advice sought or requested', may limit the ability of the NT EPA to adequately respond to information about complex and high-risk projects.

[2] Legislative Assembly of the NT Social Policy Scrutiny Committee (2019), *Inquiry into the Environment Protection Bill 2019*.

Recommendation 2:

a) Amend reg 160 to include sub-reg 160(2)(g) to read 'any longer period determined by the NT EPA based on public comments received in relation to the assessment'.

b) Amend the Regulations to enable timeframes that are based on project complexity and proportionate to the nature of the risks posed (reg 160).

b) NT EPA develop a framework or guidelines that categorises different timeframes for providing assessment reports pursuant to reg 160.

c) Amend the Regulations on the timelines for public consultation/written comments to read as follows: 'any written comments received … within the comment period *or as otherwise agreed*'. This should be based on remoteness of communities, complexity of projects and consultation requirements under other legislation, for example the Land Rights Act (see, eg, regs 31(2)(b), 36(2)(c)).

d) Amend the Regulations to enable the NT EPA to extend the 10 business day timeline to consider expert advice and information sought or requested (reg 85).

2.3 Publication of Notices for Public Consultation

The Regulations do not provide information about the provision of notices of referrals, terms of reference, supplementary information and other information to the public. Currently, those interested in making a submission are required to go onto the NT EPA website and check for documents that are open for comment. If this process were to be continued under the new regulatory regime, it would likely be cumbersome and burdensome for interested parties.

The NLC recommends that a subscription option be established, whereby interested parties are able to sign up to be notified about all new referrals and/or updates on a specific assessment and approval process. This is particularly important in light of the strict timelines for public comment.

Further, the NLC recommends that direct notification be provided to Aboriginal land councils and other relevant bodies where proposed projects are on land subject to Aboriginal interests.

Recommendation 3:

a) The NT EPA establish a system for notifying interested parties about the release of environmental assessment documents.

b) Direct notification of project updates to be provided to Aboriginal land councils and other relevant bodies where land subject to Aboriginal interests is involved.

2.4 Culturally Appropriate Consultation Requirements

2.4.1 Culturally appropriate engagement by proponents

While sections 3 'Objects' and 43 'General Duties of Proponents' of the *Environment Protection Act 2019* (NT) (**the EP Act**) address the need for Aboriginal engagement in decision-making, the NLC remains concerned that there are no mechanisms under the proposed Regulations which recognise the need for, or require, culturally appropriate consultation to take place.

The Regulations should be amended to reflect the importance of the participation of Aboriginal people and communities in the public consultation process. For example, under regulation 156, the NT EPA *should be* required to consider a proponent's report that demonstrates consultation has been undertaken (and/or is planned) with communities in a culturally appropriate manner, as per subsection 43(b) of the EP Act.

The NLC notes that the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) is supported by guidelines, 'Engage Early – Guide for proponents on best practice Indigenous engagement for environmental assessments under the EPBC Act', which aim to improve how proponents engage and consult Indigenous peoples during the environmental assessment process under the EPBC Act. Importantly, the guidelines set out the Department of the Environment's expectations on how Indigenous engagement should occur. The NLC strongly recommends that similar guidelines be developed as a matter of priority to support the NT legislative regime.

Recommendation 4:

a) Amend regulation 156 to include consideration of a proponent's report that demonstrates consultation has been undertaken (and/or is planned) with communities, including Aboriginal communities, in a culturally appropriate manner.

b) Develop guidelines based on free, prior and informed consent principles that proponents must be required to adhere to in undertaking consultations with Aboriginal people during the environmental assessment process under the EP Act and Regulations. These guidelines should be referenced in the Regulations.

2.4.2 Culturally appropriate Consultation by decision-makers

The NLC is concerned that there is no reference to the Northern Territory Land Councils, Native Title Representative Bodies, Native Title Bodies Corporate, or Registered Native Title Parties (Aboriginal Land Holders) within the environmental decision-making framework set out under the EP Act and Regulations. Given that over 50 per cent of the Northern Territory is Aboriginal land under the Land Rights Act, and much of the remaining land is either under claim or subject to native title, it is of crucial importance that these bodies are informed and consulted at all stages of environmental assessment, regulation and protection where proposed actions involve land subject to Aboriginal interests.

Accordingly, the Regulations should be amended to require consultation with Northern Territory Land Councils, Native Title Representative Bodies, Native Title Bodies Corporate, or Registered Native Title Parties (Aboriginal Land Holders) when government authorities are consulted, for example pursuant to regulations 52, 118, 133 and 140.

Recommendation 5: Amend the Regulations so that 'Consultation with Government Authorities' includes and requires consultation with Northern Territory Land Councils, Native Title Representative Bodies, Native Title Bodies Corporate, or Registered Native Title Parties (Aboriginal Land Holders) (see, eg, regs 52, 100, 109).

3. Comments by Regulation

3.1 Fit and proper person test, regulation 6

Regulation 6, in connection with section 62 of the EP Act relevantly sets out that the Minister **'may'** have regard to the factors set out at section 62 of the Act when determining whether a person is a 'fit and proper person' to hold an environmental approval. Under section 62(b), the Minister '**must'** have regard to the factors set out in regulation 6; however, the onus is on the proponent to disclose any relevant conduct/information to the Minister.

The NLC is concerned that there is no positive obligation on proponents to disclose all relevant information. Nor is there any offence which relates to the failure to meet this obligation. The NLC recommends the insertion into the Regulations of a positive obligation on proponents to disclose all relevant information in relation to the fit and proper person test. There should also be an accompanying offence provision for failing to meet this obligation, for example for the provision of false or misleading

information, including an omission to provide information.[3] A rigorous screening process for proponents is integral to promoting investor certainty, building community trust, and ensuring positive environmental outcomes.

Recommendation 6a: Amend the Regulations to:

a) Place a positive obligation on proponents to disclose whether or not they have contravened any of the laws listed at reg 6(2)(a);

b) Provide that a failure to meet this obligation could constitute an offence under the Act by intentionally or negligently providing incorrect or misleading information to the NT EPA, or concealing information.

Such an obligation is consistent with the obligation on the Minister under the *Petroleum Act 1984* (NT) (**Petroleum Act**), which provides that the Minister *must* have regard to the matters at section 15A of that Act when determining whether someone is an 'appropriate person'. The definition of 'fit and proper person' under the Regulations is significantly different to the definition of 'appropriate person' at section 15A of the Petroleum Act. To ensure consistency, the NLC recommends further amendments to align the Regulations with the Petroleum Act, as set out in Recommendation 6b below.

Recommendation 6b:

That the Regulations be amended as follows:

1. The Minister should have regard to contraventions by the body corporate and its parent company, not just contraventions by its directors (see section 15A(1)(a)(i) of the Petroleum Act).

2. The Minister should consider the general compliance of the body corporate with the laws of the kind described in regulation 6(2)(a) (see section 15A(1)(a) of the Petroleum Act);

3. The laws of the kind described in regulation 6(2)(a) should include reference to taxation laws (see section 15A(6), **prescribed legislation** (c)).

[3] Under the *Environment Protection Act 1970* (Vic), for example, applicants *must provide* details of any relevant offences (a relevant offence includes an indictable offence; an offence committed outside Victoria that would have been an indictable offence if it had been committed in Victoria on the date it was committed; and a summary offence under this Act, the Dangerous Goods Act, the Occupational Health and Safety Act, or the Equipment (Public Safety) Act) as defined in section 20C of the EPA 1970. Without such details, an application may be deemed 'incomplete' and may not be accepted by the EPA. In addition, an application for any authorisation must include a summary of an applicant's environmental performance including details of all past or current notices and enforcement actions undertaken by EPA. A failure to meet this obligation would likely constitute an offence under the Act by intentionally or negligently providing incorrect or misleading information to the EPA, or concealing information.

4. The laws of the kind described in regulation 6(2)(a) should include reference to mining and land use laws, for example the *Mining Management Act 2001* (NT), *Petroleum Act 1984* (NT), *Planning Act 1999* (NT) and the Land Rights Act (see, eg, section 15A(6), **prescribed legislation** (n)-(u)).

5. Regulation 6(4) should be removed. The Minister should be required to make an assessment that considers all contraventions (and compliance) of relevant law by a person. The Minister may form the view that a particular contravention does not preclude their satisfaction that a person is an appropriate person. For example, a person may have committed a dishonesty offence 8 years earlier, but since that time demonstrated exemplary compliance with relevant regulatory regimes and developed good repute. In these circumstances, the person's subsequent compliance and repute may be enough to satisfy the Minister that the person is an appropriate person despite the offence. Nothing in proposed regulation 6 would preclude this. However, to be able to disregard that offence is peculiar and derogates from a holistic assessment of the matters listed under regulation 6(1)-(2).[4]

6. The proposed drafting of regulation 6(2)(c) permits the Minister to consider the conduct of a parent company of an applicant, and its directors, and the partners of an applicant. However, the current drafting would not allow consideration of other associated entities, such as agents, joint ventures or other related bodies corporate (i.e. a subsidiary body corporate of an applicant or, where the applicant is a subsidiary of a holding company of another body corporate, that other body corporate). Regulation 6(2)(b) should require the Minister to consider all related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) of an applicant. (The Petroleum Legislation Amendment Bill was amended to introduce subsection 15A(4),[5] but the NLC considers that instead 15A(2)(b) (the equivalent to regulation 6(2)(c)) should have been amended in line with the recommendation of the Economic Policy Scrutiny Committee on this matter at page 16-17 of their report).[6]

3.2 Process for declaring a protected environmental area or a prohibited action, Pt 3, subdivision 2

Under subsection 35(5) of the EP Act, the Minister must 'make reasonable efforts to advise any owner or occupier of land in the declared area of the making of a temporary declaration'. However, there is no similar provision in the EP Act for a permanent declaration; instead, subsection 36(2) provides that declarations must 'be

[4] An equivalent provision was removed from the Petroleum Legislation Amendment Bill following a recommendation by the Economic Policy Scrutiny Committee.
[5] Subsection 15A(4) of the Petroleum Act relevantly provides: the Minister may require an applicant or associated entity to provide more information in relation to any matter in order for the Minister to determine whether the applicant or entity is an appropriate person to hold a permit or licence under this Act.
[6] The Economic Policy Scrutiny Committee recommended that s 15A(2)(b) be amended to provide for consideration of an associated entity as per s 16(3)(ea) and s 45(1)(ea), both of which 'require an applicant to provide information that any parent company or associated entity is an appropriate person'.

prepared in accordance with the regulations'. The current regulations should provide an obligation that is similar to section 35(5) of the EP Act.

Requiring the Minister to consult with Aboriginal landholders or occupiers, for example, before declaring or revoking the declaration of a permanent protected environmental area is in line with the objectives under section 43 of the EP Act. This would recognise the unique position held by Aboriginal people as Traditional Owners and Custodians of the land, and reflect the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Recommendation 7: Require the Minister to consult with landowners or occupiers of land before declaring or revoking the declaration of a permanent protected environmental area.

3.3 Strategic Assessments – section 49, cumulative impacts

The NLC is concerned that proponents will attempt to avoid scrutiny of the cumulative impacts of a strategic proposal by initiating referrals of specific projects that form part of a larger plan for a standard assessment under section 48 of the EP Act. We note that proponents are obliged under section 49 of the Act to submit a strategic proposal where a group of actions that individually or in combination with each other would have a significant impact on the environment or would meet a referral trigger.

However, it remains unclear what the process would be for the NT EPA to formally assess whether cumulative impacts should have been referred through a strategic assessment and how it would be addressed by the NT EPA where proponents fail to do so. The NLC recommends that guidelines (including case study examples) are published to clarify this process and offences inserted into the Regulations for proponents failing to meet this requirement. This is vitally important to ensure the proper regulation of any cumulative impacts of projects.

Recommendation 8:

a) That the department develop guidelines to inform proponents about whether to refer a proposed action under section 48 of the EP Act or to refer a strategic proposal pursuant to section 49 of the EP Act.

b) That associated offences be built into the Regulations for proponents who do not adhere to the relevant referral requirements pursuant to sections 48 and 49 of the EP Act.

3.4 Decision whether to accept referral for standard assessment, regulation 43

Sub-regulation 43(2) relevantly provides that a referral for a standard assessment is taken to be accepted where the NT EPA does not make a decision under regulation 43(1) within the required timeframe. This is inconsistent with decisions in relation to referrals for strategic assessments under regulation 44.

The NLC understands that the NT EPA will make assessments within the required timeframe in the vast majority of cases. Despite the relatively low risk that they will not assess a referral within the timeframe, it is recommended that the consequence of the NT EPA failing to do so be removed. This may unnecessarily result in standard assessments being accepted where another form of assessment would be more appropriate.

Recommendation 9: Remove sub-reg 43(2), or make reg 43 consistent with reg 44.

3.5 Method of environmental impact assessment, regulation 58

Sub-regulations 58(b) and 58(c) refer to 'level of confidence in …'. The NLC recommends removing the reference to a subjective state of mind of the NT EPA in favour of a factual basis. For instance, this sub-regulation could be re-framed as 'the predicted potential significant impacts …'.

Recommendation 10: Remove reference to the 'level of confidence in' at sub-regs 58(b) and 58(c).

In addition, there is the potential for sub-regulation 58(e) to be interpreted in a manner that is detrimental to remote Aboriginal communities. For example, the limited capacity of an individual to understand technical concepts should not be a reason to limit consultations on those technical concepts. To address this, regulation 58(e) could be amended to: 'the *preferences* of communities and individuals likely to be affected to access and understand information about the proposed action or strategic proposal and its potential significant impacts'.

Recommendation 11: Re-frame reg 58(e) to read as follows: the preferences of communities and individuals likely to be affected to access and understand information about the proposed action or strategic proposal and its potential significant impacts.

3.6 Minister's decision on recommendation, regulation 64

Sub-regulation 64(2)(b) excludes the option for the Minister to direct the NT EPA to carry out a strategic assessment, where the NT EPA has recommended that the Minister refuse to grant an approval for a proposed action or strategic proposal. This appears to be an oversight.

The NLC recommends that this sub-regulation be amended to include both a standard assessment and a strategic assessment.

Recommendation 12: The Regulations should be amended to include the option for the Minister to refuse to accept the recommendation and direct the NT EPA to carry out a strategic assessment at sub-reg 64(2)(b).

3.7 Effect of decision to refuse environmental approval, regulation 72

Where the Minister refuses to grant an environmental approval under 64(2)(a), the proponent is not eligible to refer the same or substantially the same proposed action or strategic proposal to the EPA within a period 12 months under sub-regulation 72.

In the NLC's view, if a project is determined to have an unacceptable impact via a rigorous and transparent process such as that envisioned by the new environmental legislative framework, the same (or substantially the same) proposal should not be permitted to be referred to the NT EPA again. The proponent should only be able to submit a *substantially different* proposal that mitigates any concerns raised by the NT EPA and/or Minister during the assessment process.

Recommendation 13: That reg 72 be amended to remove the ability for a proponent to resubmit without substantial change a proposal that has been refused by the Minister.

3.8 Matters that may be included in environmental impact assessment, regulation 76

The Department of the Chief Minister is currently drafting a Social Impact Policy. The draft document emphasises the need for a social impact assessment to be accompanied by a social impact management plan, to ensure the assessment leads to positive outcomes and isn't simply another document left on a shelf. The NLC recommends sub-regulation 76(4) be strengthened by the addition of 'and must be accompanied by a management plan' at the end of the sentence.

Recommendation 14: Include a requirement for a social or cultural impact management plan, where a social or cultural impact assessment is required pursuant to sub-reg 76(4).

3.9 Publication or provision of submissions received during assessment process, regulation 80

It is essential that any culturally sensitive information included in submissions be provided adequate protections. Regulation 80(5) provides that where a person making a submission requests that all or part of their submission not be published, the NT EPA '**may**' withhold publication. It is the NLC's view that it should be mandatory for the NT EPA to withhold information from publication when requested.

Recommendation 15: Amend reg 80(5) such that the NT EPA 'must' withhold a submission from publication or remove identifying information, when requested by a person making a submission.

3.10 Termination of assessment process, regulation 87

Sub-regulations 87(2) and (3) provide that the NT EPA must not issue a termination notice unless a period of 'at least 2 years' has passed. The NLC recommends that the termination regulation include a *maximum period* for which an assessment process is allowed to lie dormant. There have been cases where an assessment process has been suspended for years and then restarted with the same application and terms of reference.

Circumstances can change significantly over time and a project that has been subsequently restarted should be reassessed according to the situation at the time. Alternatively, the regulations should include a maximum period of validity for the terms of reference for any given project.

Recommendation 16:

a) Amend sub-regs 87(2) and (3) to include a maximum expiration period for the assessment and approval process; and/or

b) Amend the Regulations include a maximum period of validity for the terms of reference of any given project.

3.11 Preparation of supplement to draft environmental impact assessment, regulation 135

Under regulation 135(1)(b), a proponent must respond to submissions by preparing a supplement to the draft environmental impact statement. The NLC is concerned that requiring proponents to 'respond' may be inadequate, as the proponent may simply note concerns raised rather than addressing the concerns raised in sufficient detail.

Recommendation 17: Amend sub-reg 135(1)(b) to 'prepare a supplement to the draft environmental impact statement to respond to the submissions and address any concerns or issues raised'.

3.12 Waiver of requirement for supplement to draft environmental impact statement, regulation 141

The NLC is concerned about the broad discretion both the NT EPA and proponents have to waive the requirement for a supplementary information report. Where comments have been received during the public consultation period, these should be addressed by way of a supplement to a draft environmental impact statement, subject only to a waiver by the NT EPA in exceptional circumstances.

Recommendation 18: Regulation 141 should be amended to provide that the requirement for a supplement to a draft environmental impact statement may only be waived by the NT EPA in exceptional circumstances.