



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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Department of Environment, Parks and Water Security
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Sent via email: environment.policy@nt.gov.au

Dear Sir/Madam

RE: Draft *Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022*

Thank you for the invitation to the Northern Land Council (NLC) to comment on the draft bill.

The NLC supports the introduction of environmental Chain of Responsibility (COR) laws in the Northern Territory (NT) to increase transparency and accountability in relation to the cost to remediate and rehabilitate instances of environmental harm. It is, however, concerning that the NT Government's original intention to apply COR provisions to 'all activities that have the potential to harm the environment'¹ has been abandoned in favour of applying the proposed new law only to onshore petroleum activities.

The arbitrary application of this legislation to one industry sector fails to achieve the aim of protecting the environment and is inconsistent with the NT Government's commitment to modernise the NT's environmental protection and management laws.² The *Australia State of the Environment 2021* report released in July 2022 has found that our environment is under unacceptable and increasing pressure. To achieve an acceptable outcome the NT Government must ensure that all sectors play their part in implementing 'the "polluter pays" ecological sustainable development principle and ... protecting taxpayers from inheriting environmental liabilities and the financial burden associated with cleaning up, remediating and rehabilitating the environment'.³

The NLC urges the NT Government to reconsider the approach taken in the draft legislation and to ensure that environmental COR laws apply to all industry sectors.

¹ NT Government 2021, 'Environmental Chain of Responsibility Laws: Environmental regulatory reform information paper', https://depws.nt.gov.au/_data/assets/pdf_file/0016/1027501/ntg-depws-environmental-chain-of-responsibility-laws-information-paper-consultation-july-august-2021.pdf, accessed 25 July 2022.

² <https://depws.nt.gov.au/environment-information/environmental-policy-reform/environmental-regulatory-reform-program>, accessed 26 July 2022.

³ NT Government 2022, 'Consultation draft: chain of responsibility laws', https://depws.nt.gov.au/_data/assets/pdf_file/0003/1114662/fact-sheet-consultation-draft-bill-context-and-consultation-outcomes.pdf, accessed 26 July 2022.

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In establishing this legislation, the NT Government has a responsibility to recognise and uphold the rights and interests of Aboriginal people who are inextricably connected to the country where mining, gas and other industrial projects are being undertaken or are proposed to be undertaken.

While the NLC advocates for environmental COR laws to be applied equally across all industries, this submission focuses on the mining sector, as an industry that has had, and continues to have, a major impact on Aboriginal people and country, especially in relation to legacy mines. The application of environmental COR laws to the mining sector would greatly assist to avoid or mitigate the risk of further legacy mine sites being added to the already large inventory of these sites located across the NT. .

About the NLC

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 NT to acquire and manage their traditional lands and seas.

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. Under the Land Rights Act, the key functions of a land council include expressing the wishes and protecting the interests of Traditional Owners⁴ throughout the land council's region.

The NLC is also a native title representative body under the *Native Title Act 1993* (Cth) (Native Title Act) and has functions to represent native title holders, including in consultations and negotiations relating to Indigenous land use agreements, rights of access and other matters relating to native title. In this capacity, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt.

Discussion

Broader application of environmental COR laws

In the NT, Aboriginal people make up more than 30 per cent of the population and have freehold title rights to around 50 per cent of the land mass via the Land Rights Act, with most of the remaining lands and waters subject to native title rights and interests. Access to the natural resources of these areas, and their free, safe and assured use, is one of the basic rights and expectations articulated through both the Land Rights and Native Title Acts. Any impact on the environment that threatens access to or use of resources has implications for the Aboriginal people that rely on them.

Almost 80 per cent of the Aboriginal population lives in remote or very remote areas – the same areas where mining and other industrial land disturbance activities, and by association environmental harm, are most likely to occur. Due to the close relationship between Aboriginal values, identity, culture and the broad concept of 'country', negative impacts and damage to country are uniquely noticed and strongly felt by Aboriginal people.

As such, Aboriginal people in the NT require a measure of assurance that mining and other industrial activities will not create impacts or leave legacies that negatively affect cultural and other environmental values. Unfortunately, there are numerous examples in the NT, such as the former Redbank and Rum Jungle mine sites, where regulatory deficiencies and poor project management during mining and post-mining have resulted in ongoing pollution of the environment. These and many other former (legacy) mine sites across the NT remain unremediated and the environmental impacts of this legacy are being realised here and now.

⁴ 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*, native title holders (as defined in the *Native Title Act 1993*) and those with a traditional interest in the lands and waters that make up the NLC's region.

Incomplete or inadequate mine site rehabilitation and environmental management can lead to long-term detrimental environmental outcomes at significant financial and environmental cost, including impacts on water and biodiversity; safety risks and societal costs associated with disrupted communities; impacts on wellbeing and identity; and people's concerns about health, safety and security. These costs are disproportionately borne by Aboriginal Territorians.

Legacy mines also present enormous financial cost to the NT Government, taxpayers and Aboriginal landholders. Based on NT Government estimates, more than \$1 billion in remedial work is required to address the impacts of legacy mines.⁵ This figure does not include the current attempt at rehabilitation of the former Rum Jungle mine, which is anticipated to cost in excess of \$300 million, additional to the costs of previous attempts to rehabilitate the site

The lack of a robust environmental regulatory framework in the NT, including the proposed narrow application of COR laws to the onshore gas sector only, ensures the potential for future legacy mine sites remains high. This risk could be mitigated by a broader application of environmental COR laws to include mining and other relevant industry sectors.

The joint NLC-Central Land Council submission to the NT Government's 2020 consultation paper 'Regulation of mining activities' supported the introduction of legislation similar to the environmental COR legislation in place in Queensland. The joint submission stated:

The new laws will require the Northern Territory regulator to have oversight over the financial position of mining operators, so that if the company shows early signs of distress an environmental protection order can be made to ensure works are undertaken, or otherwise ensure that environmental conditions and approvals are enforceable against third parties. This will protect the Northern Territory community and tax payers.

The reasoning behind the Hydraulic Fracturing Inquiry's recommendation to enact environmental COR provisions was 'to ensure that gas companies cannot avoid their environmental responsibilities and that those who are in a position to influence a company's compliance are held accountable ... The Government should not bear the costs of environmental management and rehabilitation'.⁶ These comments equally apply to mining and other industry sectors whose activities have the potential to cause environmental harm.

Similarly, the Queensland Government introduced environmental COR legislation 'to ensure that companies and their related parties bear the cost of managing and rehabilitating sites and prevent leaving the Queensland taxpayers with costly environmental clean-up bills'.⁷ Unlike the NT Government's draft Bill, Queensland's environmental COR legislation is broad in scope in that it does not limit the application of these powers to any specific industry sector.

The NT Government's 2021 'Environmental chain of responsibility laws' information paper stated there was widespread support for environmental COR laws among stakeholders engaged with mining reform and noted the community expectation that NT taxpayers 'should be protected by legislative provisions to avoid inheriting the financial burden associated with cleaning up, remediating and rehabilitating the environment, if the parties responsible for the harm fail to do so (either due to negligence or insolvency)'.⁸

⁵ Northern Territory Government 2016, [https://industry.nt.gov.au/industries/mining-and-energy/mine\[1\]rehabilitation-projects/about-legacy-mines](https://industry.nt.gov.au/industries/mining-and-energy/mine[1]rehabilitation-projects/about-legacy-mines), accessed 6 April 2021

⁶ Scientific Inquiry into Hydraulic Fracturing in the Northern Territory 2018, *Final Report*, p426, https://frackinginquiry.nt.gov.au/_data/assets/pdf_file/0006/494286/Complete-Final-Report_Web.pdf

⁷ Department of Environment and Science 2019, 'Guideline: Issuing 'chain of responsibility' environmental protection orders under chapter 7, part 5, division 2 of the *Environmental Protection Act 1994*', https://environment.des.qld.gov.au/_data/assets/pdf_file/0032/88943/cm-gl-cora-env-protect-order.pdf

⁸ Northern Territory Government 2021, 'Environmental chain of responsibility laws: Environmental regulatory reform information paper', https://depws.nt.gov.au/_data/assets/pdf_file/0016/1027501/ntg-depws-environmental-chain-of-responsibility-laws-information-paper-consultation-july-august-2021.pdf, accessed 25 July 2022.

In the NLC's view, existing regulation, including the Mine Remediation Fund, has proved inadequate in addressing legacy mine issues, which further highlights the need to ensure companies retain liability through the use of environmental COR legislation. The mining industry also recognises the benefits of applying COR laws to mining to avoid the community and government having to deal with post-mining liabilities, as well as the sparing use of the legislation in other states and the inadequacy of the NT Government's current approach of using the Mine Remediation Fund to ameliorate legacy mines.⁹

Time limit on action

The NLC is also concerned that the provisions regarding a related person only apply if the person had a relevant connection to the high risk entity in the previous three years. Given the long lifespan of mines, duration of rehabilitation and post-rehabilitation monitoring, and the potential for them to enter long periods of care and maintenance, negative environmental impacts stemming from decisions made during the involvement of the related person may not become apparent for some time. The NLC strongly recommends removing the time limit.

Concerns about disincentivising investment

The information paper noted that while concerns were raised that environmental COR laws may be a disincentive to investment, 'some industry groups acknowledged that in practice the laws have not acted as a deterrent to investment'.¹⁰ Further, the Queensland Government's review of its COR legislation found no basis for concerns it may be an investment disincentive, noting positive trends in business investment including in the resources sector.¹¹

The NLC disagrees with the contention that environmental COR laws could be a disincentive to investment; on the contrary, we propose that the opposite may in fact be the case. The NLC's role includes facilitating the negotiation of land use agreements between industry proponents and Aboriginal landholders. Traditional Owners entering into land use agreements hold significant risk with regard to environmental outcomes. Broadening the scope of the bill to include all relevant industry sectors would go some way towards protecting against these risks and promoting greater trust among Traditional Owners, which may also increase their willingness to consent to enter into land use agreements.

Underlying the NLC's agreement-making framework is a clear expectation from the NLC's constituents that mining and other land use developments will be undertaken in a manner that is culturally, socially, ecologically and economically sustainable and that good environmental outcomes are paramount to project proponents and government. One barrier to mining projects that is seldom addressed is the mistrust many Traditional Owners feel towards the resources sector and government as a result of failed regulation and the resultant damage to country. In an era where the demonstration of corporate social responsibility through improved regulation and accountability is at the fore, broadening the scope of the proposed environmental COR laws would in our view be broadly welcomed as a step in the right direction, assisting to build trust between the government, industry, Aboriginal landholders and the community more broadly.

Given industry concerns had already been considered by the NT Government following stakeholder consultation and during development of the 2021 information paper, it is unclear why the Government has changed its position and narrowed the proposed environmental COR law scope to only onshore gas activities. The factsheets accompanying the draft bill provide no explanation or justification for this change. The lack of an explanation in the factsheets for the exclusion of some industry sectors can reasonably be viewed as there being no apparent justification for this approach. The selective application to the onshore

⁹ Minerals Council of Australia 2021, submission on consultation draft 'Regulation of mining activities: Environmental regulatory reform', [MCA NT Submission 010321 Inc Attachments Mining reforms](#), accessed 26 July 2022.

¹⁰ Northern Territory Government 2021, 'Environmental chain of responsibility laws: Environmental regulatory reform information paper', https://depws.nt.gov.au/data/assets/pdf_file/0016/1027501/ntg-depws-environmental-chain-of-responsibility-laws-information-paper-consultation-july-august-2021.pdf, accessed 25 July 2022 pp7-8.

¹¹ Queensland Government undated, 'Review of Queensland's environmental chain of responsibility laws', [Microsoft Word - 1. REPORT - Review of Olds Environmental Chain of Responsibility laws \(parliament.qld.gov.au\)](#), accessed 28 July 2022.

petroleum sector and the exclusion of mining and other relevant sectors in relation to the proposed laws appears to directly conflict with the NT Government's regulatory reform objectives and commitments. A robust regulatory framework is essential to support sustainable economic development in the NT and is in the best interests of industry, government, Aboriginal people and the broader community.

If you have any questions regarding this submission please contact Diane Brodie, Policy Team Leader, via email diane.brodie@nlc.org.au or telephone 08 8920 5204.

Yours faithfully



Joe Martin-Jard
CHIEF EXECUTIVE OFFICER

05 August 2022