Regulation of mining activities environmental regulatory reform

Feedback Summary report

NORTHERN TERRITORY GOVERNMENT

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Acronyms and Terms	Full form
CEO	Chief Executive Officer
Departments	Used to collectively refer to DEPWS and DITT
DEPWS	The Department of Environment, Parks and Water Security
DITT	The Department of Industry, Tourism and Trade
EMP	Environmental Management Plan
EP Act	Environment Protection Act 2019
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999 (Cth)
ERLS	Environmental registration and licensing scheme
Inquiry	Scientific Inquiry into Hydraulic Fracturing in the Northern Territory
MMA	Mining Management Act 2001
MMP	Mining Management Plan
MRF	Mining Remediation Fund
MTA	Mineral Titles Act 2010
NT	Northern Territory
NTCAT	Northern Territory Civil and Administrative Tribunal
TERC	Territory Economic Reconstruction Commission

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1. Introduction

In December 2020 the Northern Territory Government released a consultation paper, 'Regulation of mining activities – environmental regulatory reform'. The paper provided a general overview of proposed reforms to the environmental regulation of mining to generate informed stakeholder conversation with the objective of developing a contemporary and robust environmental regulatory system for mining in the NT. The paper also described the current regulatory challenges and the reasons for the reforms.

Invitations to comment were sent to key stakeholders on 9 December 2020 and the paper was published on the environmental regulatory reform website[1]. Consultation was open until 22 February 2021. Thirteen written submissions were received during the consultation period. In addition, meetings were held with eleven stakeholder groups.

This paper provides a broad summary of the verbal and written feedback received during the consultation period. It is generally divided into similar themes and discussion points to the consultation paper, with a few exceptions to summarise some of the more generic issues raised. It also outlines our response to the issues raised, including those areas where further consultation is required.

The information obtained through this process has been used to inform drafting instructions for the development of legislation to amend the *Environment Protection Act 2019* (EP Act) to introduce changes to the framework for managing the environmental impacts of mining activities. It will also be used to develop drafting instructions to amend the *Mining Management Act 2001* (MMA) to improve other elements of the mining management framework. The draft legislation that is developed will be made available for comment as part of the ongoing regulatory reform program.

All of the information received has been, and will continue to be, considered in the reform process; however, due to its broad nature, not all comments are reflected in this summary overview. The Departments will continue to engage with stakeholders on the reforms and be undertaking further consultation as identified throughout this report.

We thank all the groups, associations and individuals that took time to meet and make written submissions. Submissions are available from https://depws.nt.gov.au/environment-information/environmental-policy-reform/submissions-received-on-the-consultation-paper.

2. Overview of feedback

Stakeholders were generally supportive of the proposed tiered, risk-based, registration and licensing model for managing environmental impacts from mining activities. There were, however, differing views on how this should be applied and what should be included or excluded. Both industry and environmental stakeholder groups identified that the reforms should not act as a disincentive to investment and raised concerns where they considered this may occur.

There was also general acceptance of improved compliance and enforcement provisions, statutory timelines for decision making and the simplification of mining management plans; however, stakeholders were divided in their views about reforms relating to public participation and transparency for decision making, the availability of, and standing for, third party appeals, the use of independent specialists and

[1] https://depws.nt.gov.au/environment-information/environmental-policy-reform/environmental-regulatory-reform-program

peer reviews, the management of care and maintenance periods, land access arrangements, residual risk payments and chain of responsibility legislation.

Stakeholders were also divided on the proposed dual agency delivery model for the regulation of mining, with the majority of stakeholders suggesting that the entirety should be retained in a single agency. Generally, industry stakeholders advocated for regulatory responsibility to remain with the Department of Industry, Tourism and Trade (DITT), while environmental stakeholders and Aboriginal representatives called for all responsibility for regulating mining to be transferred to the Department of Environment, Parks and Water Security (DEPWS). Stakeholders also expressed concern with the perceived duplication of responsibilities and considered that it represented a risk for security calculations and mine remediation and closure requirements in particular.

All stakeholders raised concerns about regulator resourcing and capacity, identifying that the chosen model needed to be appropriately resourced – both in terms of numbers of staffing and expertise.

3. Environmental management framework

The paper proposed a new environmental management framework, comprising an environmental registration and licensing scheme (ERLS) supported by general (mining) environmental duties.

Under this proposal, assessment against risk criteria would determine whether operations are subject to registration or licensing. Environmental registrations will be available to exploration, extractive and mining activities that can meet standard conditions. Environmental licences will be available for those operators that cannot meet the standard conditions or where standard conditions are not appropriate to operational circumstances. It is anticipated that most extractive and exploration activities and some mining operations would be able to operate under a modified standard condition licence. Mining activities that cannot meet the risk criteria and the standard conditions would be directed towards a more conventional licence with conditions tailored to the identified risks (i.e. a 'tailored' licence). This licensing approach is most likely to capture mining operations.

Registrations and licences would be valid for the life of the mining activity, and may be transferred between operators, suspended or revoked.

It was identified that the ERLS would remove the existing 'on/off tenement' approach to mining regulation, where environmental impacts are controlled by different legislation.

3.1. General (mining) environmental obligations/duties

The paper identified that the proposed general (mining) environmental duties would provide a 'safety net' that all mining operators must comply with. The general obligations would be specified within the EP Act and identify the standard expectations for operators when conducting activities, regardless of whether that activity requires registration or licensing, and will be enforceable.

There was no consensus on the inclusion of general mining environmental duties.

A number of stakeholders, particularly industry representatives, did not support the proposed general (mining) environmental duties. Concerns included that the general environmental duties appeared to be duplicative across what was considered to be already robust environment legislation, that they were unclear and too broad, and that they did not satisfy the 'SMART' principles.

While environmental and Aboriginal representatives were slightly more supportive, these groups were concerned that the duties were insufficient, not enforceable, and may be interpreted as representing the highest, rather than a minimum, standard. One stakeholder proposed additional duties, including ones associated with reducing greenhouse gas emissions.

Response

It appeared that a number of stakeholders did not fully understand the concept or purpose of the general (mining) environmental duties, leading to the lack of support. As noted by some stakeholders, the duties are specific to the mining industry at this time.

More generalised duties are proposed to apply to other industries and persons as the reforms progress, similar to the general duties currently contained in the Waste Management and Pollution Control Act 1998 and the Environment Protection Act 1970 (Victoria).

The general duties are intended to create a 'safety net' – a series of minimum standards that all operators must meet regardless of whether or not the activity requires a registration or licence. The duties make it clear that there is an expectation that all operators will take steps to manage environmental risks, even where those risks are not considered to warrant a specific registration or licence.

The general duties will be retained as an important element of a holistic management framework. The concerns about the measurability and enforceability of the duties are acknowledged. While it is proposed that wording similar to that contained in the consultation paper will be adopted in the draft legislation in the first instance, further stakeholder consultation on the wording of these duties during the drafting process will be important to ensure they meet the 'safety net' objective.

3.2. Environmental registration and licensing scheme

There was general consensus on the overarching design of the ERLS, though several stakeholders requested more detail in relation to how the risk based approach would be applied. There was also general support for the development and use of risk criteria and standard conditions with unanimous advice that they must be developed through stakeholder engagement and consultation.

Industry representatives suggested that the NT Government could take a closer look at the Western Australian low impact system of approvals, which is considered to work well with the potential to streamline approvals. They highlighted that there may be a danger of duplication in the authorisation process leading to higher costs and delays and that reporting should also not duplicate existing requirements. They also highlighted that if exploration drilling and trenching could be managed through registration and standard guidelines, that this could greatly streamline the process for those activities.

There was mixed feedback about the best approach to determining when registration or licensing is required – noting that the MMA currently contains a non-exhaustive list of activities that may require an authorisation. However, respondents appeared to agree that the existing threshold ('potentially substantial disturbance') was generally appropriate.

Concerns were raised by some industry stakeholders about existing exemptions for certain activities, including fossicking and those associated with the extraction of materials for infrastructure purposes, and the inconsistencies this creates for the extractive and mining industry over other land users, such as extraction for road construction by the Department of Infrastructure, Planning and Logistics.

Industry representatives also did not support the removal of the on/off tenement approach and recommended maintaining the current separation. On the other hand, environmental representatives expressed support for the removal of the on/off tenement approach.

Some environmental representatives raised concerns that proposals to no longer require mining management plans (MMPs) for environmental regulation may cause a reduction in transparency. Environmental stakeholders also emphasised that any environmental management plans (EMPs) or MMPs should be approved prior to licence approval, rather than as a condition of licence. Generally environmental representatives considered that all licensing approvals should be issued by the Minister and not the Chief Executive Officer (CEO) of DEPWS as they considered that mining approvals are political decisions.

Respondents also made recommendations about the types of activities that should be included within the definition of mining activity, and other terminology to improve clarity about the proposed system.

Aboriginal representatives raised concerns that the proposed registration and standard conditions would not adequately address risk and may result in a lowest common denominator approach. They also stated that Aboriginal people should be involved in all phases of the mining approval process and that traditional owners should be consulted about environmental management.

Aboriginal representatives were also concerned that the proposed approach may be less rigorous than the current system, and considered that mining activities cannot be conducted under standard conditions. In support of the proposed fit and proper person test, Aboriginal representatives identified that proponents should also demonstrate previous Aboriginal engagement and that authorisation processes should include provisions to ensure that prospective purchasers have the financial and technical capacity to deliver the rehabilitation requirements. These groups also considered that sacred sites protection and socio-cultural protections should be included in standard conditions and Aboriginal landowners and Native Title representatives should receive the same notification as other landowners.

While not explicitly discussed in the consultation paper, the potential for the charging of fees was raised by a number of stakeholders. In general terms, industry representatives raised concerns that the ERLS could lead to new fee regimes and associated costs, while environmental representatives were supportive of the introduction of fees to support the assessment of mining activities.

Response

The proposed registration and licensing scheme was broadly accepted by all stakeholders. A decision to grant an environmental registration or licence is a regulatory decision and it is appropriately made by the CEO of DEPWS. Recommendations to change the decision maker under the ERLS to the Minister have not been adopted.

Draft legislation to amend the EP Act and EP Regulations to establish the scheme will be prepared. This legislation will remove the existing on/off tenement demarcation enabling more holistic consideration and management of environmental impacts. This is considered to be of benefit to improving overall environmental outcomes associated with mining activities.

Many of the concerns raised relate to specific components of the scheme and its implementation. DEPWS will undertake further consultation with stakeholders to develop risk criteria and standard conditions for the ERLS taking into account the views and information already received. These consultation processes will also seek to commence consideration of operational and practical matters such as the application requirements.

Where a mining operator cannot undertake their activity in accordance with the standard criteria or conditions, the operator will be able to seek a licence. This provides the flexibility required for operators to respond to specific circumstances associated with their developments and ensures the system is risk based and responsive.

As identified in the consultation paper, it is intended that registrations and licences will be publicly available, as will the risk criteria, standard conditions and any reports required to be submitted in accordance with the conditions, including any compliance reports and reports about environmental incidents. Mining authorisations

and security amounts will also be made publicly available. Consequently there is no reduction in transparency resulting from the new regulatory system.

The EP Act allows the Administrator to make Regulations to charge fees. The introduction of fees, if this occurs, would be undertaken as a separate process and would require the support of the Minister.

3.3. Reviews of registration and licence conditions

The consultation paper identified that licences, standard conditions and risk criteria would be subject to periodic reviews. It also identified a number of proposed circumstances in which the CEO of DEPWS would be able to amend the conditions of registration and/or licences.

Performance improvement agreements were proposed as a mechanism to ensure the operator has sufficient time in which to become compliant with the changed conditions of a registration.

There was general consensus for the concept of standard conditions to apply to low risk activities, either through registration or licence. There was also general acknowledgement of the need to be able to review and amend standard conditions, but differing views on how this should occur.

Industry representatives generally supported the ability to review and amend conditions provided that this was limited to requests by the operator or as a result of a breach of conditions. They also highlighted that there needed to be robust consultation processes and that the CEO should provide the operator with notice and the opportunity to respond to any proposed amendments of licence conditions. It was also acknowledged that there is a need for clear and agreed outcomes for rehabilitation and closure requirements.

Environmental representatives had concerns about CEO powers to amend licence conditions, which they consider should set objective, scientifically based targets and not be based on the 'satisfaction' of the decision maker. It was also recommended that EMPs should be subject to public review prior to approval, rather than relegated to a condition of a licence. Further information was sought about when conditions can be changed, and what the thresholds between registration and licensing will be.

Aboriginal representatives supported the use of clear and transparent conditions in approvals and considered that the CEO should be able to amend the conditions of a licence at the request of an Aboriginal landowner or an impacted local community. These representatives considered amendments of conditions should be subject to consultation with landowners and impacted communities, and should include sufficient information to allow input into the process, and require consideration of their comments. They also considered that public submissions should be sought during any review process and those comments should be taken into account.

Response

The proposed model of developing standard conditions for basic licences and allowing for tailored conditions for more complex approvals was broadly accepted.

Draft legislation to amend the EP Act and EP Regulations to establish the scheme will be prepared in accordance with the parameters identified in the consultation paper, including requirements for consultation with affected registrants and licence holders on proposed amendments to licence conditions.

Release of draft legislation for consultation will allow further feedback on the processes for reviewing and amending registration and licence conditions and related consultation, and the operation of elements such as the proposed performance improvement plans.

3.4. Independent specialist and peer review

It was proposed the CEO of DEPWS be able to require, as part of an application or as a condition of registration or a licence, information to be prepared by a qualified person or subject to peer review.

The paper identified that where the CEO intended to require the applicant to meet the costs of a peer reviewer engaged by the CEO, the CEO would first consult with the applicant.

The paper also provided an undertaking to explore opportunities to streamline assessment processes by ensuring peer reviews and other reports are developed on a 'prepare once, use many' basis and sought feedback on how this could be achieved.

There was no consensus on the use of independent specialists and peer reviews.

Industry representatives did not support the proposed powers to require peer reviews and to require industry to pay for the reviews. Industry representatives identified that the type of work often considered for peer review is already of a highly technical nature and is undertaken by contracted experts. These groups considered that requiring peer review or other consideration of the conclusions or findings in these circumstances was duplicative and an unnecessary cost burden. Industry stakeholders identified a need for improved high-quality guidance material with a greater focus on government internal skills and capacity.

Industry representatives recommended that, if these proposals are adopted, specific criteria should be developed in consultation with industry to determine when such powers are or could be used (including that such requests require CEO approval) and that there should be obligations placed on DEPWS to report publicly why a peer review was required in order to justify the use of such provisions. It was also suggested that the establishment of a publicly available 'peer review' panel could reduce time delays associated with obtaining peer reviews.

Consistent with concerns regarding regulator capacity and resourcing (discussed further below), industry representatives highlighted that the government should focus on building its internal skill set so that external peer reviews were not required.

Environmental representatives considered that a transparent risk assessment process should be used to make the determination of whether peer review powers can be used. These groups recommended such risk assessment consider the sensitivity of the receptors and the potential impacts of the proposed activities. They identified that if there are activities determined to be high-risk, or if there is a high level of uncertainty around potential impacts on high-value receptors, then it would be reasonable to consider a peer review as "required".

Aboriginal representatives generally supported peer review being conducted in all instances, unless the CEO was satisfied there will not be any detrimental or significant impact on traditional owners. They did not support the 'prepare once, use many' approach to peer review because of the many variabilities in the environment and socio-economic landscape. They further identified a number of useful criteria that should be considered when determining whether to seek peer review and particularly whether the 'right question was asked' and not just whether the study was correctly performed.

Aboriginal representatives also recommended that regulator capacity should be enhanced to reduce the need for external advice.

Response

The proposed legislative ability to utilise independent specialists to undertake peer reviews was contentious and seen as a potentially significant delay in the approvals process and also a significant increase in the costs to industry in gaining approvals. It also highlighted and reflected a perceived lack of capacity and skills within the

Departments to undertake the core business of assessing information and making informed licensing and registration recommendations.

It is not unusual or unreasonable to require independent expert advice and peer reviews of highly technical information, and it is unlikely that Government will always have the necessary technical expertise. The need for expert advice and peer review is greater as environmental risk increases, as noted by environmental groups. The Departments acknowledge that the use of independent expertise and peer reviews is not necessary and appropriate in all circumstances and will develop guidance on the use of peer review provisions in consultation with stakeholders. The development of such guidance will form part of the implementation stage of legislative development and thus has a lower priority for engagement than other elements of the reform program.

3.5. Public participation, transparency, timeliness and reporting

The consultation paper proposed a number of mechanisms to improve public participation, transparency, timeliness and accountability in the decision making process.

This included:

- requirements to publically advertise certain licence applications
- the publication of all granted registrations and licences, and any reports and information provided as part of registration or licence conditions
- requirements for the public reporting of environmental impacts, such as reports of compliance against the environmental registration or licence; reports of the activities undertaken in relation to the registered or licensed activity and any environmental impacts; reports associated with the duty to notify of an incident and to record an incident
- the establishment of decision making timeframes for all steps in the registration and licensing process.

There was only limited consensus on the proposed level of public involvement in the application process or what information should be published. However, the majority of stakeholders supported the introduction of decision making timeframes.

Industry representatives raised various concerns that increasing public participation in the assessment and approval process will further delay approvals and weaken investor confidence. Industry representatives also expressed a view that the NT Government has favoured public perception over the pragmatic reality of operating a mining venture. These groups raised concerns that increased transparency and public participation opportunities would be misused by special interest groups with an agenda to delay mineral exploration and mining. Industry representatives considered that increased transparency on mining ventures should be accompanied by increased transparency of government processes and decision making.

Industry representatives were generally supportive of the introduction of clearly stated timelines for determining applications, variations and amendments but also recommended that, if the Departments propose to also use ‘stop the clock’ provisions, that they be they be restricted to 10 business days and only renewed at the proponents’ request. These groups identified that entering into ‘query cycles’ was a main cause of delays in obtaining approvals.

Industry representatives also recommended that Government report ‘whole of government’ timeframes and proposed different timeframes for different types of activities. Industry representatives also identified that proponents should be able to prevent the publishing of certain documents, in accordance with s.57 of the Information Act 2002.

Environmental representatives support increased transparency and public reporting against licence conditions, including the publication of securities.

Aboriginal representatives support increased transparency across both environmental management and mining obligations. These groups suggest that public consultation timeframes should be sensitive to the unique challenges and resources of traditional owners and communities as well as the climactic conditions in the Northern Territory. They also suggested public reporting of estimates of reserves for all prospective mines (not just under ASX rules) and increased transparency in reporting of reportable and recordable incidents.

Response

The NT Government has committed to increasing transparency and improving accountability and certainty as part of its environmental regulatory reform principles. Increasing transparency, allowing for appropriate public participation and establishing decision making timeframes will create greater accountability and build confidence in the regulatory framework.

In general terms, the proposals identified in the paper will be adopted, noting that:

- *confidentiality provisions already contained in the EP Act will apply to these reforms*
- *different timeframes will be established in consultation with industry relating to different steps in the mining registration and licensing assessment and approval process and for different stages and types of activity, depending on level of risk; for example, it is anticipated that different timeframes will be established for the approval of a registration than for a modified or tailored licence*
- *all registration and licence conditions are proposed to be made public, and all reports or other material submitted in compliance with a registration or licence condition (subject to confidentiality provisions) will also be made public, including any environmental management plans or similar that may be required as a condition of registration or licensing*
- *mining securities will be published*
- *further consultation on criteria and standard conditions will be undertaken; this will include consultation to ensure that 'standard' reporting requirements are targeted and appropriate for the type of mining activity being undertaken*
- *concerns that merits review processes associated with registration or licensing decisions may undermine the grant of an Environmental Approval by the Environment Minister will be addressed by limiting merits review of these decisions to circumstances where an Environmental Approval has not been granted.*

The need for accountability at all levels – including the Government – is acknowledged and recognised. The Departments already report decision making timeframes as part of annual reporting requirements and this is expected to continue under the reforms. In addition, s. 290 of the EP Act requires the CEO DEPWS to publish a report on all enforcement measures and compliance measures taken under the Act at least once in each year. This is also expected to be incorporated into the DEPWS annual report.

3.6. Compliance and enforcement

The consultation paper identified that the EP Act contains a range of compliance and enforcement tools, as well as obligations to report incidents which cause, or may cause, material or serious environmental harm. The paper identified that these tools and obligations would be extended to all persons regulated under the EP Act as environmental regulatory reforms are completed, commencing with the mining industry.

The paper acknowledged that not all registered operators may be able to immediately comply with changes to standard conditions. To address this it proposed two mechanisms:

1. powers for the CEO of DEPWS to require the operator to apply for a licence, and grant the operator a licence and revoke the registration

2. provisions to allow the registered operator to enter into a 'performance improvement plan' to provide the operator with the opportunity to make adjustments to meet the condition(s).

The paper identified that the legislation would include 'show cause' processes where the CEO of DEPWS intends to revoke a registration and grant a licence or to revoke a licence.

There was some consensus on the proposed level of compliance and enforcement.

Industry representatives consider the existing suite of compliance and enforcement tools available to the Departments is sufficient and generally support the proposed performance improvement plan process.

Environmental representatives commented that not reporting incidents should be subject to compliance and enforcement proceedings and recommended strengthening of civil penalties, infringement notices, enforceable undertakings etc. consistent with the Final Report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory' (Inquiry). They also provided support for a range of compliance and enforcement tools (fines, impacts on other licences, penalties etc.) and supported annual compliance reporting for mining operators and penalties for providing inaccurate information.

Environmental representatives raised some concerns about the use of performance improvement plans and wanted more clarification on those circumstances when plans can be entered into. These groups also identified that such plans should be legally enforceable in the event of a breach.

Aboriginal representatives recommend that Aboriginal landowners and communities should be able to enforce rehabilitation when the regulator fails to take action. They provided general support for the performance improvement plan process and commented that entry into a performance improvement plan should be a trigger to review security. Aboriginal representatives also supported annual compliance reporting by mining operators and DEPWS and extending reporting requirements to those that 'may' cause harm – to identify patterns of risky behaviour.

Response

As noted in the consultation paper the EP Act already contains a range of compliance and enforcement tools. These were developed in consideration of the recommendations of the Inquiry and include matters such as civil penalties, infringement notices, enforceable undertakings, offences for failing to notify of incidents that may result in material or serious environmental harm etc. as recommended by environmental groups. Appropriate offences will be developed to support the new registration and licensing system.

The proposed 'performance improvement plans' are specifically designed to help operators become compliant when changes to standard conditions are imposed. It is therefore not considered appropriate that enforcement occur while the operator is acting in compliance with a plan. However, compliance with the plan itself will be a matter that is enforceable.

There are no proposals to allow third parties to undertake regulatory compliance activities, however third parties are always encouraged to report alleged contraventions and raise concerns about compliance with conditions of authorisations.

3.7. Mine remediation and closure

The consultation paper identified that best practice mining management requires planning for mine closure to be integrated at the early stages of mine feasibility studies, mine planning, development, operation, remediation and closure. It also identified that improved definitions are required for more adaptive and flexible mine remediation and mine closure criteria.

Under the reform proposals, it was identified that an operator would apply to surrender the environmental registration or licence. DEPWS will determine whether the agreed environmental outcomes and closure objectives have been achieved. Once agreed that the objectives have been achieved, it would accept the surrender and advise DITT which will issue a mine closure certificate and return the security.

Industry representatives generally supported improved 'front end' planning to establish clear post mining land use and determine agreed outcomes for remediation designs and closure criteria. These groups expressed concerns about the inclusion of mine closure planning requirements at the exploration stage but highlighted that this could be addressed with greater clarity about what is expected for remediation commitments at different phases of the mining process. They also identified that there are sometimes good reasons why disturbances cannot or should not be immediately remediated. An example provided was that full rehabilitation of drill holes may need to be delayed so that 'down hole' geophysics can be conducted. It was suggested that it should be possible to incorporate such conditions in the terms of registrations and licences, with postponement, not avoidance, of remediation.

Industry also recommended that there needed to be more in field inspections to assess and agree on rehabilitated land outcomes to allow securities to be released. Clear links between lease relinquishment conditions and return of security was also encouraged. Industry representatives raised concerns that mine closure could be regulated by both Departments and that any duplication in responsibilities may cause confusion.

Environmental representatives generally supported life of mine planning as part of initial feasibility studies and development planning. They recommended that a comprehensive and fully detailed plan for closure (including a detailed remediation plan) should be required before authorisation is granted. They also suggested that a quick, yet robust, process for assessment of rehabilitation outcomes by the regulator could increase the incentive for progressive rehabilitation to be completed and security return streamlined.

Environmental representatives noted that achieving a restored 'natural' ecosystem may take decades and that proponents that have undertaken remediation trials during mining could be rewarded for defining practical transitional rehabilitation criteria. They raised concerns about how post-rehabilitation monitoring would be managed post license surrender and highlighted that any dual responsibilities for mine closure between DITT and DEPWS may cause confusion.

Environmental representatives suggested that any remediation guidelines should ensure that the specific environmental, social and operational context for the mining operation be considered, rather than relying on generic guidance. They also stated that guidelines should be subject to public consultation.

Aboriginal representatives considered that Aboriginal people disproportionately bear the costs of incomplete or inadequate mine rehabilitation and should be involved in mine closure planning, be able to enforce rehabilitation if the regulator fails to do so, and should be allowed to complete an independent audit of decommissioning works to the satisfaction of Aboriginal land holders before a closure certificate is issued. They also recommended that Aboriginal landowners should be able to call on security funds to address incomplete rehabilitation at closure. In addition, a number of recommendations were provided to raise regulatory standards to ensure that progressive rehabilitation efforts are strengthened across the industry.

Response

The Departments acknowledge that expectations for planning, and the level of planning, for rehabilitation and closure must be consistent with the phase of development. Mine closure planning approaches need to be flexible to address the unknowns of commodity movements, future uses of mineral deposits and mine life. The Departments also recognise that different activities will require different approaches to rehabilitation and closure planning.

It is expected that mine remediation requirements and closure planning will become more detailed and prescriptive over time as the life of mine moves closer to closure, however an understanding of the 'post mining use' from the commencement of a project can provide substantial certainty and assist operators in meeting regulatory requirements and managing the expectations of the community and any impacted landholders.

The Departments acknowledge that language in the consultation document may have increased confusion about regulator roles and raised concerns about duplication and confusion in responsibilities. The Departments use:

- *Mine remediation and/or rehabilitation to describe physical activities to move mine towards a safe, stable and non-polluting state.*
- *Mine closure to describe administrative conclusion of security, permit surrender and tenure cancellation.*

It will be the responsibility of DEPWS to ensure appropriate planning for, and completion of, remediation and rehabilitation requirements. It will the responsibility of DITT, acting on the information and advice obtained from DEPWS, to undertake the administrative processes associated with mine closure.

The Departments note that mine remediation needs to be flexible enough to restore the disturbed environment as well as consider both the current economic resources being mined and the potential for future exploitation of resources when closing out an area that may be appropriate for further mining and should not lead to sterilising a resource that still has potential.

Stakeholders made a number of recommendations for practical steps that can be taken to encourage progressive rehabilitation approaches and improve rehabilitation outcomes. These will be further considered and incorporated into the reforms, either through legislation, policy or registration and licence conditions as appropriate.

4. Mining management regulatory reforms

A significant proportion of the existing authorisation and MMP process is focussed on environmental impacts and proposed mitigation and management options. The consultation paper identified that, through this reform process, MMPs would be replaced with a more simplified mining plan or program that concentrates only on mining activities including; infrastructure design, infrastructure management and operation systems, staged extraction, decommissioning and mine closure.

4.1. Mining authorisations and management plans

There was general consensus on the proposed changes to mining authorisations and MMPs.

Industry representatives highlighted that authorisations under the MMA need to contain clear, measurable and enforceable conditions and provided general support for the replacement of the current MMP model with a more streamlined and focussed authorisation process and a simplified mining plan. Industry were supportive of parallel processing and generally supported the review and inclusion of improved definitions

for elements such as care and maintenance, legacy mine features and mine closure. Environmental representatives also highlighted that authorisations need to contain conditions that are clear, measurable and enforceable.

Aboriginal representatives thought that the MMP document process should be retained as it contains a large amount of information. They also considered that Aboriginal people should be involved in all phases of the mining approval process and this should require Traditional Owners to be consulted about environmental management. They also recommended that increased transparency in environmental management should be accompanied by the same increase in mining authorisation transparency.

Response

Significant sections of the current MMP address environmental aspects that will be managed under the environmental protection legislation through registration or licensing. The proposed processes for registration and licensing will provide ample opportunities for community participation and consultation on a mining proposal. There may be future opportunity to have a single application portal available for industry that would satisfy requirements of both Acts. However, at this stage it is the intention of both Departments to move away from the traditional MMP/ EMP format as a part of the approval process to streamline the authorisation process.

The requirements for a mining authorisation will be significantly reduced under the proposed new model and a new application process will need to reflect this. However, the form of the new application requirements cannot be outlined at this early stage of the reform process. This will be a matter for future consultation and engagement with stakeholders.

4.2. Management of mining securities

All operators that are required to hold a mining authorisation pay a security and levy regardless of the type of mining activity (exploration, extractives or mining operations). The mining security framework is intended to encourage progressive rehabilitation activities and allow for the graduated return of securities on progressive rehabilitation and achievement of environmental outcomes.

The consultation paper proposed that securities be co-managed by DEPWS and DITT. Under this proposal it was identified that DITT would be responsible for administering (including the receipt and management of) the mining security and the associated mining levy and mining remediation fund. The security would comprise two elements – an environmental component determined by DEPWS and an infrastructure and 'close out' component determined by DITT.

Both industry and environmental representatives consider the securities framework would benefit from holistic review and modernisation, including to ensure that the calculator is accurate and that mines are not 'under-secured'. Both groups were generally supportive of approaches that encourage progressive rehabilitation and the graduated return of securities on the completion of rehabilitation activities.

There was no consensus on the retention of security management with DITT or on third party merits review of security decisions.

Industry representatives expressed concerns about potential duplication and delays from running a dual security framework, and stressed that the Departments must work together. It was suggested that a 'life of mine' approach should be adopted for securities where appropriate, with opportunities to break down security into disturbed areas. It was also recommended that securities could be reduced for operators who can demonstrate successful rehabilitation of similar disturbed areas for other projects and those that are part of global operations with major assets. The release of securities when rehabilitation activities have been completed and an audit has been undertaken was also recommended.

There was general support from industry representatives for greater transparency in decision making about mining securities, support for applicants and affected parties (not consultation contributors) to have standing to review the merits of security calculation decisions, and support for clear linkage between lease relinquishment conditions and return of security, and for DITT to administer securities. Industry would also like to see consideration of the use of insurance as an alternative to cash and bonds to support additional investment elsewhere and consideration of either different security rates or potential exclusion from levy obligations for exploration sites, small mines and quarries with a lower environmental impact.

Environmental representatives consider that securities should cover 100% of rehabilitation, monitoring costs and closure. Environmental representatives suggested providing partial relinquishment of security for undertaking activities quickly, but withholding some security so that final security relinquishment is tied to environmental outcomes being proven. They also recommended that any operational mining security review should also consider operator historical performance and the expectations and involvement of end land users in assessing rehabilitation outcomes. One stakeholder suggested that a more novel approach could include discounted security based on past successful performance, release of security based on percentage achieved and preferential access to exploration rights for companies with proven rehabilitation success.

Environmental representatives sought clarification on whether the security is based on sudden unplanned closure or planned end of mining operations and called for the transfer of all securities to DEPWS. They provided general support for the annual review of securities and supported merit review of securities by third parties. They also stated that there should be more transparency in the calculation of security and that the security calculator should be publicly available and subject to peer review and consultation.

Aboriginal representatives advocated for Aboriginal landowners being able to call on security to address incomplete rehabilitation at closure and for greater involvement of Aboriginal landowners and communities in security recalculation processes. They also considered that entry into a performance improvement plan should also trigger a security review.

Aboriginal representatives want merit review of securities by third parties and recommended independent third party audits of rehabilitation costs before security is set and that security (or a portion) should transfer as a residual risk payment at end of mine closure and not be released. They also stated that there should be more transparency in the calculation of security.

Response

The NT Government is committed to ensuring that industry, and not Territorian tax payers, are responsible for the costs associated with the remediation and rehabilitation of mining activities. The mining security and levy frameworks are designed to deliver this outcome, although as identified by stakeholders, there is room for significant improvement in this area.

The consultation paper was intended to recognise that there may be separate security requirements associated with environmental impacts and liabilities and other matters. It was not intended to imply that a dual framework would be developed and implemented. Rather, the paper suggested that the framework should be administered by DITT, however with input and advice from DEPWS, particularly in relation to the security quantum required to address environmental impacts and release (or return) of the security.

It is important that the NT's financial assurance framework for mining activities, which currently includes the mining security and mining levy, appropriately and accurately addresses the risks associated with mining activities while ensuring that once all remediation and rehabilitation obligations have been completed, mining operators are able to relinquish mining titles. Stakeholders provided a number of suggestions of how securities could be used to encourage progressive rehabilitation approaches and improve rehabilitation outcomes, as well as about the security framework more generally.

The Departments will undertake further consultation on NT's financial assurance framework for mining activities building on both the proposals in this paper and previous mining levy consultation activities. This will include how feedback provided during this process, including opportunities for greater public involvement in remediation, can be incorporated into the reforms, either through legislation, policy or conditions (on the registration, licence or mining authorisation) as appropriate.

4.3. Management of care and maintenance periods

Care and maintenance is the term used to describe periods of time where a mine operator pauses active mining, generally in response to changing commodity conditions or other business matters. The NT Government recognises that industry needs flexibility to operate profitably in volatile commodity markets.

While active mining is no longer occurring during care and maintenance periods, there is still an expectation that environmental impacts on the mine site will continue to be managed and that infrastructure and other equipment will be maintained.

To ensure an operator does not use care and maintenance to avoid any environmental management obligations, the consultation paper identified that the revised mining regulatory framework would provide a statutory definition of care and maintenance periods, notification requirements and include obligations to require mining operators that enter into care and maintenance periods to continue to comply with any environmental registration or licence. It also queried whether time limits should be imposed on care and maintenance periods.

Industry representatives did not support time limits on care and maintenance periods, but were in agreement that environmental management conditions should be applied regardless of whether an activity is current or the site is in care and maintenance. Industry representatives recommended that operational licence conditions account for care and maintenance obligations, without requiring a separate licence. One stakeholder recommended that operators be obliged to notify that operations will temporarily cease, while another indicated support for the development of criteria (commercial and other conditions) to define when a company can remain in care and maintenance. Environmental representatives identified a need for improved clarity around care and maintenance criteria, what is required to re-start a mine, a clear description of proposed care and maintenance risks and activities and continued reporting of environmental outcomes during care and maintenance periods.

Environmental representatives raised concerns that care and maintenance has been used as a 'parking zone' to not rehabilitate mines, identifying that companies often fail while in care and maintenance periods. These groups supported time limitations, with one stakeholder suggesting that a period of 2 - 5 years may be appropriate, subject to review for the specific mine.

One stakeholder suggested that prior to entering care and maintenance an operator should be required to complete all progressive rehabilitation obligations, and that the mine site should be left in a condition where, if it subsequently fails to resume operating, there will be no adverse environmental impacts. Environmental representatives also made a number of recommendations in relation to the definitions and standard obligations and conditions.

Aboriginal representatives stated that care and maintenance should be a trigger for security review and also raised concerns about care and maintenance being used to avoid rehabilitation obligations. They considered that licence conditions should account for care and maintenance obligations and that operators should be required to advise when entering care and maintenance.

Industry, environmental and Aboriginal representatives all provided general support for operators providing a care and maintenance plan identifying work to be done to keep the site in compliance with conditions.

Response

There is a general concern, or perception, outside of the mining industry that care and maintenance periods are used by operators to avoid remediation and rehabilitation responsibilities. It is important that this matter be addressed to improve confidence in the regulatory system. At the same time the NT Government recognises that care and maintenance periods are an appropriate, and necessary, part of the mining and commodity cycle.

Consistent with the proposals in the paper, a definition of 'care and maintenance' will be included in the reformed legislation. Further consideration will be given to developing, in consultation with stakeholders, criteria to guide decisions by operators and regulators about when it is appropriate for mining operations to enter, and remain, in care and maintenance periods. The Departments currently consider that such criteria would be most appropriately reflected in policy, rather than legislation. There are no proposals to impose time limits on care and maintenance periods at this time.

Registration and licence conditions will include conditions associated with care and maintenance periods, and separate licensing is not proposed. Further consultation will be undertaken with stakeholders regarding these conditions, including the level of reporting to the regulator that is required about entry into or exit from a care and maintenance period.

4.4. Mining Remediation Fund and legacy mines

Legacy mines are sites of environmental impact for which no one can be held responsible and which ultimately are left for the NT taxpayer to clean up. Miners pay an annual 1% levy on mine securities to fund the Mining Remediation Fund (MRF) which in turn can be used to undertake remediation works on legacy mine sites.

Under the reform proposals, the ongoing management of legacy mine sites would be retained in DITT with the associated provisions remaining in the MMA. The consultation paper identified that, where relevant, the EP Act would reference the MMA with respect to legacy mines. When managing legacy mine sites the NT Government is actively rehabilitating pre-existing environmental impacts, rather than causing new environmental harm.

To increase confidence, it was proposed to include definitions for different legacy mine features to advance future remediation and active management options and associated management responsibilities and expectations. Other proposals included introducing mechanisms for better governance of the MRF, potential collaboration with land-owners and other stakeholders, transparency provisions to streamline the remediation of legacy mine features and to improve provisions for the disbursement of the MRF.

Industry representatives generally supported the proposals related to the MRF and legacy mines but expressed concern if the intent of amending the definitions of an unsecured mining activity was to change the liability and financial exposure and obligations for operators. Industry representatives also supported improved governance of the MRF, and collaboration and transparency in the remediation of legacy sites and suggested that government needs to develop a sound strategy for prioritising sites, leveraging industry assistance and maximising opportunities for local communities to participate in remediation. They suggested that legacy mine management could be guided by a strategic expenditure plan developed by an MRF working group or independent expert advisory panel, similar to the Western Australia Abandoned Mines Program.

Industry representatives would like to see any accrued interest arising from the MRF returned into the MRF to further bolster funds and remediation opportunities. It was also suggested that there could be a potential reduction in the annual levy to incentivise remediation of legacy sites which would be linked to successful rehabilitation. One stakeholder suggested that total rehabilitation liability of mining legacies should be reported as a contingent liability and included in NT Government's financial statements.

Another stakeholder highlighted the heritage aspects of legacy mines, identifying that these need greater acceptance. This stakeholder encouraged the prioritisation of making legacy mine sites safe, while affording the opportunity for protecting and preserving the heritage aspects of such sites. It identified there may be further opportunities for those developing new mines in the vicinity of legacy sites to get involved in their protection and preservation.

Environmental representatives recommended that legacy mine management be transferred to DEPWS as an environmental management issue. They also recommended the development of preferential rights for exploration licenses for areas where there are legacy sites, with provisions that the legacy sites must be addressed should the area be developed.

Aboriginal representatives do not support reducing security to encourage legacy remediation and rehabilitation. They suggested that the NT Government should call for tenders from relevant mining operators to perform remediation works and support improved governance, collaboration and transparency in the remediation of legacy sites.

Response

The NT Government is committed to ensuring that industry, and not Territorian tax payers, are responsible for the costs associated with the remediation and rehabilitation of mining activities. The mining security and levy frameworks are designed to deliver this outcome, although as identified by stakeholders there is room for significant improvement in this area.

There are a number of legal issues on access and rights that can arise when the NT Government is attempting to address environmental harm on legacy mine sites which can, in part, be clarified through improved definitions and provisions. Concerns that amending the definition could alter existing liabilities for operators are noted. The definitions will be drafted carefully to ensure that there is no substantive change in liability of what is currently considered to be an 'unsecured activity'.

It is important that the NT's financial assurance framework for mining activities, which currently includes the mining security and mining levy, appropriately and accurately addresses the risks associated with mining activities. Building on the proposals in this paper, the Departments will undertake further consultation on the NT's financial assurance framework for mining activities.

4.5. Land access arrangements

The consultation paper provided an overview of existing approaches to land access arrangements, and sought general feedback on how the management and administration of land access arrangements could be improved. Relevantly, it identified that there are currently only limited arrangements prescribed through legislation, however a 'Code of conduct for mineral explorers in the Northern Territory' (Code of Conduct) has been developed for mineral explorers.

There was generally no consensus on changes to land access arrangements. Industry representatives highlighted that there is a lack of certainty in land access processes and that land access is a key factor limiting exploration in the NT. They emphasised that any reform or review should also include a review of processes for access to Aboriginal land. Generally industry representatives did not support the introduction of mandatory land access agreements through legislation. These groups raised concerns that the exploration and mining industry is viewed as being similar to the petroleum industry when this is not the case, and that mining companies will be leveraged as a source of income by landowners. However, these groups did support the development of a Land Access Guide to support the Code of Conduct. Industry representatives also commented that access to pastoralists contact information (held by the NT Government) was not always forthcoming, which did not assist with dialogue between the two parties.

Pastoralist representatives supported the introduction of mandatory land access agreements consistent with the recommendations of the Inquiry, which are currently being implemented in the petroleum industry. Environmental representatives expressed concern about existing arrangements, identifying that there needs to be transparent consultation with affected landholders and lease holders.

Response

There have been relatively few formal land access disputes associated with mining activities, however it is acknowledged that there are currently no formalised or explicit processes for managing such disputes, and that consequently incidents may go unreported.

A certain degree of access rights are extended with the mineral interest under the Mineral Titles Act 2010 (MTA), and expanding on these obligations under the MTA may be the best option. General land access issues can arise as a result of the early stages of exploration activities, whereas operational mines usually have contractual agreements in place with landholders, which cover a suite of issues, including land access.

Further consultation on the most appropriate approach to managing land access issues will be undertaken with stakeholders.

5. Judicial and merits review of environmental and mining decisions

The EP Act identifies that decisions made under the Act in relation to the environmental impact assessment and environmental approval process are subject to review by the Court (*judicial review*). In addition, some decisions made by environmental officers and the CEO of DEPWS can be reviewed by the Northern Territory Civil and Administrative Tribunal (NTCAT); this is a *merits review* process that considers whether the decision that was made was the "right" decision. The term 'standing' is used to identify who may seek the review.

The consultation paper identified that it was proposed to allow judicial review for all decisions made under the EP Act. Consistent with current provisions in the EP Act, mining applicants, directly affected persons, and persons that participated in the decision making process (e.g. by commenting on a licensing application) would be able to seek a judicial review.

The paper also identified a proposal to allow merits review for environmental licensing or registration decisions. It identified that mining applicants, directly affected persons, and persons that participated in the decision making process, would be able to seek a merits review.

In respect of compliance or enforcement decisions, such as the issue of an environment protection notice under the EP Act, only a directly affected person (e.g. a landholder or licensee) was proposed to be able to seek merits review.

The paper also identified proposals to allow both judicial and merits review of a number of decisions under the MMA. These included:

- a directly affected person (e.g. a landholder or licensee) could seek judicial review for all decisions made under the MMA
- a directly affected person could seek merits review for a mining authorisation decision and authorisation condition decisions and a decision of a mining officer made under the MMA, with these reviews to be conducted by NTCAT.

The transfer of merits review responsibilities to NTCAT would result in the abolition of the Mining Board, consistent with the Board's previous advice to Government that it should be disbanded and issues referred to an independent third party, such as NTCAT, for resolution.

There was only limited consensus on the proposed review provisions and the extent of 'standing'.

Industry representatives generally supported merits review for directly affected parties but expressed concern about extending standing to additional groups. They recommended that standing should not be granted on the basis of participation in public consultation processes.

These groups also raised concerns that merit reviews of licensing decisions could be a 'back door' into Ministerial approval decisions for projects that were subject to environmental impact assessment, and recommended that any project referred for environmental assessment should be excluded from merits review. They also raised concern about the definition of 'genuine and valid' submission as per the judicial review provisions of the Act and requested this matter be reconsidered in terms of the Act as a whole and these reforms.

Industry representatives supported reviews of security calculations by operators and merit review for compliance and enforcement decisions, with standing limited to directly affected persons (including applicant and landholders). Industry did not support the abolition of the Mining Board with the future referral of reviews to the NTCAT, based on a view that the NTCAT had limited knowledge, experience or skills to resolve mining related disputes.

Environmental representatives indicated general support for merits review, including for security calculations, but expect this standing to extend to third parties and recommended that the definition of 'directly affected' person be more expansively defined.

Aboriginal representatives said Aboriginal landowners and native title claimants should be explicitly acknowledged and given merit review rights and that social and cultural matters should be grounds for review.

Response

Under the proposed reforms, the majority of registration and licensing decisions, and compliance and enforcement decisions, will be made by the CEO of DEPWS or employees. It is appropriate that such decisions of an administrative nature are subject to merits review.

The proposed standing provisions are broadly consistent with the EP Act. However, to address concerns that merits review processes associated with registration or licensing decisions may undermine the grant of an Environmental Approval by the Environment Minister, merits review of registration and licensing decisions will be limited to those circumstances where the mining activity does not *require an Environmental Approval.*

The EP Act is currently silent on the operation of an Environmental Approval during any period that a judicial or merits review is being sought, however an injunction may be sought to prevent a proponent from commencing operations under an Environmental Approval. Further consideration will be given as to whether the EP Act and/or MMA should specifically identify that the commencement of a review does not delay or suspend a decision or the commencement of activities, or the circumstances under which a decision is delayed or suspended, while the outcome of the review is determined.

The grounds for review are not legislated; consequently reviews associated with social or cultural matters would be permitted under the legislation.

The transfer of review responsibilities to the NTCAT is consistent with other resource legislation in the Northern Territory.

6. Transitional arrangements

It will be necessary to develop systems and processes that enable the orderly and staged transfer of existing mining operations into the new regulatory system. The consultation paper identified that it is intended that transitional processes have minimal impact on operations or investor confidence, whilst occurring in a timely manner that limits the period required for the NT Government to run parallel regulatory systems. Maintaining parallel regulatory systems increases complexity and cost for regulators and operators.

The paper identified various options for transitional arrangements depending on whether or not the mining activity was currently authorised with an approved MMP, was in care and maintenance, or was in the process of being transferred.

Stakeholders differed in their views on transition. Some industry stakeholders suggested that existing mining operations should be grandfathered and not required to transition to the licensing scheme at all. Other industry stakeholders considered that each mine needs its own transitional arrangements and planning. These stakeholders identified that the timeframes required to finalise transitional processes would rely heavily on the actions of the regulator.

In general, stakeholders expressed support for a flexible approach that enabled operators to transfer when it best suits them, within a timeframe for transition of 4 years. Industry representatives suggested that government identify proposed timeframes based on those used by other jurisdictions and provided general support for timelines provided that these have sufficient flexibility to resolve difficulties.

Environmental representatives and Aboriginal representatives did not raise any concerns with the proposed transitional arrangements.

Response

The Departments agree with the general view put forward by industry stakeholders that each mine will have different circumstances and, as such, a degree of flexibility in the approach to implementing transitional matters is required. While some 'grandfathering' may be required, particularly during the transitional phase, the broad adoption of grandfathering approaches would result in the NT Government maintaining dual regulatory systems for an extensive period. This could lead to confusion and largely divergent regulations and practices over time. It is neither feasible nor an appropriate use of resources.

Draft legislation will be prepared broadly adopting the transitional provisions outlined in the consultation paper, and including a level of flexibility to allow operators to transition into the new system earlier should that align with business needs.

The Departments will continue to engage with the mining industry to identify specific transitional needs and solutions.

7. Regulator coordination and resourcing

All stakeholders expressed concerns about existing regulator resourcing, and highlighted that to be effective the revised framework would need to be appropriately resourced with relevantly qualified and experienced staff. The majority of stakeholders called on the NT Government to adequately resource the

regulatory framework, with industry representatives noting that peer reviews should not be used as an alternative to well resourced, expert regulators.

Industry and Aboriginal representatives raised concerns about separating the responsibilities for mining infrastructure and environmental management, including the potential for duplication and the creation of uncertainty and inefficiency. Environmental representatives highlighted the importance of agency collaboration to ensure there were no 'gaps' in regulation.

Environmental and Aboriginal representatives requested improved guidance about environmental matters and expectations and support improved resourcing, the introduction of a 'full' cost recovery model for mining, and provided support for formalised and cooperative arrangements between DEPWS and DITT.

Response

The appropriate resourcing of regulators is recognised as a key requirement to deliver any regulatory system. Stakeholder concerns in this regard are noted. Resourcing is an issue that will be further considered as the reforms progress.

Legislation is only part of the regulatory framework. The Departments are committed to developing appropriate guidance material to support any legislative changes. This material will be developed in consultation with stakeholders.

8. Future reform areas

In addition to outlining reforms to the mining regulatory framework, the consultation paper identified and sought feedback on other areas of reform that are being investigated by the NT Government; specifically the introduction of 'chain of responsibility' laws and the establishment of a 'residual risk payment' framework.

Chain of responsibility laws are a tool that is used to ensure compliance with regulatory obligations. These laws operate by 'redirecting' responsibility for environmental obligations from one entity (usually the owner or operator of a facility) to another related person, such as the holding company of the operator, in circumstances where the first entity is unable to fulfil its obligations. Usually this inability arises from insolvency or other financial pressures. Further information on these laws is available in the 'Environmental Chain of Responsibility: Environmental regulatory reform information paper'[2].

Residual risk payments are designed to address long term risks and costs that remain associated with a development site, while providing an end point for an operator to surrender the site and Government to return any security that may be held. These payments recognise that post surrender management is an ongoing and necessary requirement of many activities where structures or facilities are allowed to remain on site as part of rehabilitation and closure.

Industry representatives differed in their views of chain of responsibility laws. Some representatives acknowledged the role of such laws, while not necessarily agreeing with them, noting that use of the laws is avoided if companies meet their environmental obligations. Other stakeholders raised concerns that such laws are contrary to the core purpose underpinning the creation of corporations in limiting liability, and were opposed to the introduction of such laws. It was pointed out that chain of responsibility laws

[2] Available: 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

could have a negative effect on joint venture structure arrangements. One stakeholder identified that if the laws were applied they should be done so broadly. Industry representatives also recommended that if government intends to introduce these laws, a hierarchy of liability should be applied, such as those contained in the New South Wales contaminated land legislation and Queensland environment protection laws.

Both industry and environmental representatives raised concern that chain of responsibility, if improperly introduced, may act as a disincentive to investment. Environmental representatives also recommended more specificity be provided about who the laws may apply to.

Aboriginal representatives recommended limitation periods for chain of responsibility should be carefully considered to best protect the NT.

Industry representatives had differing views on residual risk payments. Some industry representatives considered that residual risk payments have conceptual merit but it would require the regulator to calculate a sensible and realistic number based on sound understanding of actual risks. Further consultation on the proposed methodology, calculation, minimum thresholds, review mechanisms, evidentiary provisions, and processes to guarantee the independence of the calculation would be required. Industry also said that greater clarity and certainty would be needed on how the NT Government would propose to hold the funds to pay for a residual risk, and then ensure they are available (rather than redirecting funds to other activities).

Industry also stated that any residual risk system must be underpinned by a legally robust process that absolves a company of 'the chain of responsibility' or any other legal recourse once this payment has been made. Industry raised additional questions about the uncertainty in modelling and predictions informing residual risk assessments and that as a framework it should not provide a disincentive to investment. It was thought that, given the complexities of the interaction of Territory legislation with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), providing clarity that a residual risk payment applies on ALRA land would be important.

Other industry representatives did not support the concept and considered that the Government must be willing to accept the liability for some level of residual risk and allow companies to surrender their liabilities. These representatives expressed the view that companies that have satisfied their rehabilitation requirements and compensated governments for any remaining risks or management needs in good faith should not be liable for genuinely unforeseen problems that occur in the years following surrender. They reiterated that mine closure certificates and security refunds should be evidence of full and final satisfaction of environmental obligations in relation to a site.

Environmental representatives generally supported the concept of residual risk payments but highlighted that they should be separate to mining securities and payments should not result in reduced securities. These groups considered that the residual risk framework should consider repairs and maintenance to infrastructure as well as provisions to undertake any additional remediation that may be required if models which suggest no residual environmental impact are not verified.

Aboriginal representatives generally supported the proposed residual risk payment framework and said that the security (or a portion) should transfer as a residual risk payment at end of mine closure and not be released.

Response

The views obtained through this consultation will be used to inform further development of these concepts.

Further information on a proposed framework for introducing 'chain of responsibility' laws, with broad application across all activities and industries, has been made available to stakeholders since this consultation activity was finalised. Information on the results of that consultation will be provided separately.

Residual risk payments form part of financial assurance frameworks. Further consultation on the most appropriate approach to managing residual risks will be undertaken with stakeholders.

9. Additional issues raised

Stakeholders provided a broad range of recommendations and commentary, including on matters that had not specifically been addressed by the consultation paper.

These include recommendations relating to:

- Data management – including requiring that data be provided in common formats, developing legislation to specifically address intellectual property issues to ensure data is available and can be used publicly, and establishing systems to make data freely available, particularly data and information developed through peer review processes.
- Environmental offsets.
- Protection of sacred sites – including mandatory requirements for Aboriginal Areas Protection Authority certificates and land council sacred site clearances.
- The engagement of Aboriginal people in decision making, including proposals for the reordering of consents with environmental and sacred site approvals to be sought before mining or native title processes are undertaken.
- Improving the management of social impacts and performance, including requirements for better guidance material on social impacts and stronger legislative requirements to better manage the impacts of mining.

Both industry and environmental representatives also questioned the alignment of the reforms with the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth; EPBC Act) and the recently completed independent review by Professor Samuels[3].

Industry representatives also sought assurance that the reforms would take into consideration the findings of the Productivity Commission Resources Sector Regulation Report[4] and raised concerns of potential misalignment with the NT Government TERC final report[5].

Environmental representatives expressed concern that the recommendations of the Inquiry had not been fully applied to the mining reforms, while industry representatives cautioned against such an approach given the considerable differences between the mining and petroleum industries.

[3] https://epbcactreview.environment.gov.au/
[4] https://www.pc.gov.au/inquiries/completed/resources#report
[5] https://ntrebound.nt.gov.au/reports/final-report

Response

The Departments have considered relevant reviews and reports, including those conducted by the Productivity Commission and the TERC, and the Inquiry, in developing reform proposals. The Departments will also continue to consider reforms at the national level which may impact the NT. It is however noted that reforms to the EPBC Act will primarily impact those significant developments which require an Environmental Approval under the EP Act.

The Northern Territory Aboriginal Sacred Sites Act 1989 provides the framework for managing potential impacts on sacred sites. It is the responsibility of operators to seek sacred sites clearances, and to ensure that any activities do not result in unauthorised impacts on sacred sites.

Some of the recommendations made during this consultation process, such as reordering consent processes to require environmental and sacred site approvals to be obtained prior to mineral titling and environmental offsets, are beyond the scope of the reforms. Other recommendations, such as those relating to data management and the provision of guidance material, will be implemented and addressed as appropriate as the reform program progresses.

APPENDIX

CONSULTATION QUESTIONS: PROPOSED FRAMEWORK – GENERAL ENVIRONMENTAL DUTIES

1. Is the approach of imposing general (mining) environmental obligations or duties to provide a 'safety net' and support for the licensing and registration scheme supported? If not, why?
2. What alternatives should be considered?
3. What other general (mining) environmental obligations should be included?

CONSULTATION QUESTIONS: REGISTRATION & LICENCING SCHEME OVERVIEW

4. Rather than relying on a non-exhaustive list of substantial disturbance activities such as that contained in s.35 of the MMA, should the new framework legislation identify an exhaustive list of non-disturbing activities? This could include, for example, airborne surveys and terrestrial seismic surveys undertaken using existing tracks.
5. Are there any mining related activities that currently require authorisation and a mining management plan that should not be subject to the new framework?
6. Are there mining related activities that are not currently required to be authorised that should be under these reforms?

CONSULTATION QUESTIONS: REGISTRATIONS – LICENCES – REVIEWS

7. Under what other circumstances should the CEO be able to amend the conditions of a licence?

CONSULTATION QUESTIONS: INDEPENDENT SPECIALIST REVIEWS

8. What protections could be included in the legislation to ensure peer review powers are only used when required to ensure that the licensing process provides the necessary environmental protections and meets the objectives of the EP Act?
9. What information or assistance could you provide to enable administrative guidance that supports a "prepare once, use many" approach to peer review documents to be developed?

CONSULTATION QUESTIONS: COMPLIANCE & ENFORCEMENT

10. Are there any compliance and enforcement tools not currently available in the EP Act or the MMA that should be considered for inclusion as part of these reforms?

CONSULTATION QUESTIONS: MINING AUTHORISATIONS

11. What improvements to the mining authorisation process do you consider would improve efficiency and effectiveness?

CONSULTATION QUESTIONS: MINING SECURITIES

12. How can the mining securities framework be improved?
13. How can the management of mining securities be improved to provide greater incentives and reward for progressive rehabilitation?
14. What improvements could be made to the calculation of mining securities to better address potential environmental risks and impacts?
15. What other matters would you like to see considered as part of a review of mining security assessment?

CONSULTATION QUESTIONS: REVIEWS OF MINING DECISIONS

16. Should mining operators have standing to seek a merits review of the proposed environmental and/or infrastructure security? Why?

CONSULTATION QUESTIONS: CARE AND MAINTENANCE

17. How should 'care and maintenance' be defined?
18. What other mechanisms could be adopted to improve the management of environmental impacts during care and maintenance periods?
19. Should the legislation impose a time limitation on how long a site can remain in 'care and maintenance'? If so, what period may be appropriate?
20. What, if any, standard obligations for environmental management during care and maintenance periods should be incorporated into the EP Act?

CONSULTATION QUESTIONS: MANAGING LEGACY MINES

21. In addition to the proposals contained in this paper, what other mechanisms could the Territory introduce to minimise the potential for legacy sites to be created in the future?
22. In what ways can industry be encouraged and supported to play a larger role in undertaking remediation works on legacy sites?

CONSULTATION QUESTIONS: LAND ACCESS ARRANGEMENTS

23. In what ways could the management and administration of land access arrangements be improved for both mineral title holders and affected landholders or leaseholders?

CONSULTATION QUESTIONS: PROPOSED TRANSITIONAL ARRANGEMENTS

24. How would the proposed transitional arrangements effect your mining activity?
25. What improvements could be made to the proposed transitional arrangements to facilitate the transfer of projects into the new system in a timely, staged and efficient manner?
26. For each type of mining activity – exploration, extraction and mining operations – what would be an appropriate timeframe in which to require the activity to obtain an environmental registration or licence?
27. Are the proposed arrangements for non-finalised processes appropriate? If not, what alternative processes should be considered?
28. What arrangements would you propose for operators that wish to transfer the mining activity?

CONSULTATION QUESTIONS: RESIDUAL RISK PAYMENTS – CHAIN OF RESPONSIBILITY

29. What elements would you like to see included in a residual risk framework?
30. Are there specific matters that should be considered as part of developing a residual risk framework applicable to mining activities?
31. What benefits might there be to applying chain of responsibility laws to mining and other environmentally impacting activities?