CENTRAL LAND COUNCIL

and

NORTHERN LAND COUNCIL

Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023

12 October 2023

To: Environment Policy, Department of Environment, Parks, and Water Security and Legacy Mines Unit, Department of Industry, Tourism and Trade

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ACKNOWLEDGEMENT

The Central Land Council and Northern Land Council acknowledge the Territory's traditional owners, who were the first inhabitants in the Territory and remain the first and most important stewards of the Territory's resources.

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1. EXECUTIVE SUMMARY

The Northern Land Council (**NLC**) and Central Land Council (**CLC**), together, the **Land Councils**, welcome the proposal to improve the regulatory framework dealing with environmental impacts of mining.

However, the draft Environmental Protection Legislation Amendment (Mining) Bill (**EP Bill**) and draft Legacy Mines Remediation Bill (**Legacy Mines Bill**), together the **draft bills**, are not sufficiently developed to be introduced. The proposed changes are extensive and passage of the bills in their current form is likely to introduce significant uncertainty for the industry, Traditional Owners[1] and other stakeholders.

The Northern Territory Government (**Territory Government**) must collaborate with the Land Councils to develop legislation that has broad support and is thoroughly understood prior to implementation. To this end, we submit that the draft bills must be deferred for at least three to six months.

Overall, the Land Councils consider that the draft bills:

1. do not provide for the adequate involvement of Aboriginal Territorians;
2. are a missed opportunity to introduce comprehensive reforms;
3. will not substantially improve regulation and environmental protection; and
4. will have an uncertain impact on legacy mines and mines approaching closure.

Our concerns specific to the EP Bill are:

1. Entry onto Aboriginal land pursuant to the EP Bill must comply with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**) and the *Aboriginal Land Act 1978* (NT) (**Aboriginal Land Act**).
2. Licence conditions should be amended on request, and in consultation with Traditional Owners.
3. Consultation timeframes should be appropriate for Traditional Owners.
4. Traditional Owners should have standing for merits review.
5. The EP Bill gives too much discretion to the Minister.
6. Standard conditions for an environment (mining) licence (**mining licence**) and risk criteria must be the subject of consultation *before* passing the EP Bill.

[1] The use of the term 'Traditional Owners' is used to include all types of Aboriginal land owners including traditional Aboriginal owners as defined in the Land Rights Act and native title holders as defined in the *Native Title Act 1993* (Cth).

7. There must be greater transparency and consultation on applications for mining licences.

8. More information should be required for applications for mineral titles and mining licences.

9. Additional reasons for the Minister to revoke mining licences should be included.

10. There should be stronger provisions for comprehensive and costed rehabilitation and closure plans.

11. Provisions around mining securities should be strengthened.

12. Provisions regarding mines in care and maintenance should be strengthened.

13. Public reporting requirements should be improved.

14. Enforcement and compliance measures need to be strengthened and funded accordingly.

15. Provisions regarding best practice progressive rehabilitation should be included.

16. Transitional arrangements are inadequate.

Our specific concerns in relation to the Legacy Mines Bill are:

1. Entry onto Aboriginal land pursuant to the Legacy Mines Bill must comply with the Land Rights Act and the Aboriginal Land Act.

2. The definition of ”legacy mines” is not sufficiently targeted.

3. Regulations for the Legacy Mines Bill must be made available for comment.

4. The Department of Environment, Parks and Water Security (**DEPWS**) should be responsible for environmental management and rehabilitation of legacy mines.

5. Remediation activities must be subject to statutory approvals.

6. The impact of the Legacy Mines Bill on specific sites is unclear.

We expand on these concerns below, and refer to recommendations made in the joint Land Councils' submission 'regulation of mining activities- environmental regulatory reform' dated 1 March 2021 (**2021 submission**).

2. BROAD CONCERNS WITH THE DRAFT BILLS

2.1 Inadequate involvement of Aboriginal Territorians.

If the draft bills are introduced in their current form, the Land Councils cannot support the new regulatory scheme. This is because the draft bills do not:

- refer to Traditional Owners or Aboriginal communities other than purporting to remove the need for compliance with the Land Rights Act and Aboriginal Land Act when accessing Aboriginal land which is likely to be ultra vires and requires further explanation.

- provide for meaningful involvement of Traditional Owners and Aboriginal communities.

Traditional Owners bear significant risk and share the Territory Government's concerns about adequate and safe rehabilitation. Their interests extend beyond those of the general public or pastoral landowners who do not have the same cultural ties nor responsibilities. Further, where a project is located on Aboriginal land or native title affected land, the post-mining land use is determined by or with the Traditional Owners.

In our submission, it follows that:

- Regulatory approvals for all stages of mining disturbance must involve Traditional Owners (as the Inquiry into the Destruction of the 46,000 year old caves at Juukan Gorge (Juukan Gorge Inquiry) made clear). This is not confined to requirements in relation to sacred sites but applies to all archaeological sites, and clearances and approvals, regardless of whether the project is on Aboriginal land or land subject to native title.

- Traditional Owners must be directly involved in mine closure planning from an early stage and rehabilitation after mine closure should be to the satisfaction of Traditional Owners.

- The draft bills must take into account to the proposed National Environmental Standard in First Nations Participation and Engagement.

The Land Councils are deeply dissatisfied by the failure of the draft bills to adequately address these concerns.

2.2 Missed opportunity to introduce comprehensive reforms

The draft bills fail to implement a number of critical reforms, including relating to:

1. protecting sacred sites and cultural heritage approvals;

2. residual risk payments;

3. chain of responsibility.

<u>Protection of sacred sites and cultural heritage approvals</u>

The draft bills do not propose any amendments to sacred sites or cultural heritage approval requirements, when these reforms are urgent and critical. The draft bills should include minimum requirements for protection, including:

- a cultural heritage (including sacred sites) survey as a condition of a grant of a mineral title prior to all ground disturbance. This should include a report from a suitably qualified cultural heritage specialist working directly with Traditional Owners. The recommendations from the report must inform a cultural heritage management agreement for the life of the project. It is standard practice in the resources sector across Australia for regulatory approvals to include a requirement for an on-site survey of cultural heritage.

- in CLC's region, a Sacred Site Clearance Certificate (**SSCC**) to be issued by CLC before any ground disturbing works

- in NLC's region:

    a. a sacred sites survey conducted either by NLC or Aboriginal Areas Protection Authority (**AAPA**); and

    b. an Authority Certificate issued by AAPA before any disturbance activities.

The CLC submits that:

- SSCCs provide the applicant with documentary evidence that the custodians and Traditional Owners of the subject land have been consulted and agree that the applicant's proposed works can go ahead without damage to sacred sites on the basis of the conditions in the SSCCs.

- SSCCs protect the applicants against prosecution for entering, damaging or interfering with sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) and the Land Rights Act.

- The CLC's SSCC process was endorsed in the Mineral Council of Australia's submission to the Juukan Gorge Inquiry.[2]

The Land Councils further submit that:

- A search of AAPA's sites register is not an adequate process in relation to exploration as this is the stage at which otherwise undisturbed land is first disturbed. The Juukan Gorge Inquiry recommended that Traditional Owners must be central in decision making about sacred sites and cultural heritage.

- The *Heritage Act 2011* (NT) does not meet the proposed national cultural heritage reform standards post-Juukan Gorge Inquiry. Consequently, archaeological sites and objects in the NT are currently extremely vulnerable to mining and exploration projects.

[2] Minerals Council of Australia, submission to the Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia, p 9, sub 104.

Residual risk payments

The reforms do not propose any provisions regarding residual risk payments. In order to increase public confidence through transparency, the public must be able to access information regarding:

- the value of bonds;
- the methodology used to calculate liabilities;
- the requirements, risks and expectations the bond is underpinning; and
- the terms upon which the residual risk bonds can be called upon.

Further, Traditional Owners should have the ability to recommend release and revision of residual risk payments.

Chain of responsibility reforms

While chain of responsibility legislation has been introduced in relation to petroleum activities, there has been no equivalent legislation in relation to mining activities. Such reforms are equally critical in relation to mining activities, and the NLC refers to its submission of 5 August 2022 in relation to the draft Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022.

The Land Councils submit that equivalent chain of responsibility provisions should be included in these reforms.

2.3 The draft bills will not substantially improve regulation and environmental protection.

The draft bills are unlikely to improve the standard of regulation and environmental protection in the NT for the following reasons:

- A one-month public consultation period is insufficient given the complexity and volume of the draft bills.
- The draft bills lack critical information:
    a. calculation of security bonds and making sure that they cover the full costs of rehabilitation. This leaves the risk that Traditional Owners will inherit contaminated land or other legacy issues;
    b. standard conditions for a mining licence and the risk criteria;
    c. proposed regulations for the Legacy Mines Bill;
    d. detail on mine closure planning;
    e. conditions applying to mines in care and maintenance; and

f. factors guiding the exercise of the broad Ministerial discretions contained in the draft bills.

- While there are broad similarities with the concept of standard conditions in the Queensland legislation, the draft bills do not appear to be informed by the experiences or practices of larger, proven regulatory jurisdictions.

- Key aspects provided for in the *Mining Management Act 2001* (NT) (**Mining Management Act**) have no suitable replacements, such as:

  a. the level of information required to be submitted in an application for an Authorisation under section 36(2); and

  b. the requirement that a mining management plan include a plan and costing of closure activities under section 40(2)(g).

- Several large and legacy mine sites may be caught by the Legacy Mines Bill and therefore be subject to less rigorous rehabilitation requirements.

2.4 The impact on legacy mines and mines approaching closure is unclear

The draft bills fail to provide a clear and structured framework for mandatory mine closure planning. This is a major omission, and is one of the key areas in which the Territory Government should be a regulatory leader. At present, the operators at major mines rely entirely on their internal corporate standards which follow a mandatory mine closure planning framework. This is unacceptable.

The Land Councils hold significant concerns regarding the impact of the draft bills on:

- the existing regulatory framework for legacy mine sites such as the former Rum Jungle uranium mine site near Batchelor (**Rum Jungle**) and the former Redbank Mine at Sandy Flat (**Redbank Mine**);

- mines with extremely complex long-term closure challenges such as the McArthur River Mine; and

- other mines approaching closure.

3. DRAFT EP BILL

3.1. Entry onto Aboriginal land must comply with the Land Rights Act and the Aboriginal Land Act.

The Land Councils consider that clause 124ZZZM(7) of the EP Bill, if legislated in its current form, is likely to be *ultra vires*. This is because:

- That provision proposes to allow a person to enter land or premises, despite the land being Aboriginal land, without complying with the Land Rights Act and the Aboriginal Land Act.[3]

[3] Clause 124ZZZM(7), EP Bill

Those provisions are intended to apply to a holder of a conditional environmental approval under section 85 of the *Environment Protection Act 2019* (NT) (**EP Act**) or the holder of a conditional mining licence.[4]

- Those environmental approvals or mining licences contain conditions that apply after an 'action' or 'mining activity' has been completed. The provisions cite examples such as rehabilitation, monitoring or reporting obligations, but are not exhaustive. That is, those conditions are not limited to these specifically identified activities.[5] The purported power to enter Aboriginal land, irrespective of compliance with the Land Rights Act or Aboriginal Land Act*,* is therefore broad in scope*.*

- Section 70(2A) of the Land Rights Act establishes defences to the offence of entering or remaining on Aboriginal land, including where that person enters or remains on land in performing functions or exercising powers under a law of the NT (such as the Aboriginal Land Act). However, that provision is subject to section 73(1)(b) of the Land Rights Act.

- Section 73(1)(b) of the Land Rights Act provides that the Territory Government may make laws regulating *entry* onto Aboriginal land, with the additional requirement in section 74(1) that such laws be capable of concurrent operation with the Land Rights Act. Section 73(1)(b) *does not* provide that the Territory Government may make laws allowing extensive access for mining related works and activities on Aboriginal land.

- An entry for that purpose and activity would detract from the rights conferred upon an Aboriginal Land Trust by the fee simple grant, and alter the scheme of the Land Rights Act for conferring rights on others to enter and use Aboriginal land (including in respect of mining).

In addition, the Land Councils are concerned that legislating clause 124ZZZM(7) in its current form will:

- allow for sacred site and cultural heritage protection approvals to be circumvented, particularly by third parties who are not bound by agreements with Traditional Owners, Land Councils and Aboriginal Land Trusts; and

- raise significant uncertainty regarding liability for any damage that may occur pursuant to these provisions.

It follows, in our submission, that:

- the Territory Government must comprehensively set out its view as to the interaction between clause 124ZZZM(7) and the Land Rights Act;

- the Land Councils be provided an opportunity to respond;

- clause 124ZZZM(7) of the EP Bill must be amended to ensure compliance with the Land Rights Act; and

[4] Clause 124ZZZL, EP Bill.

[5] See section 85(2) of EP Act and clause 124ZA(2), EP Bill

- this should occur prior to Parliament's consideration of the EP Bill.

3.2. Licence conditions should be amended on request, and in consultation with Aboriginal Territorians.

Clauses 124ZQ(2) and (3) relate to the publishing of reasons for a decision to amend the conditions of a licence. The Land Councils consider that:

- the requirement to publish reasons is unduly narrow;
- the Minister should be able to amend the conditions of a licence upon consultation with an impacted local community (including an Aboriginal community) or Traditional Owners;
- the requirements in clauses 124ZQ(2) and (3) should apply to all amendments of conditions, regardless of the reason for which the amendment is required;
- the requirement should be one of consultation, rather than mere publishing of the proposed amendment.

3.3. Consultation timeframes should be appropriate for Traditional Owners.

Under the EP Bill, public comment periods must not be less than 30 business days after the date of the notice.[6]

As stated in our 2021 submission, this is an insufficient timeframe for consultation with Traditional Owners who normally live in remote locations. Arranging consultations is logistically time-consuming and resource intensive.

3.4. Traditional Owners should have standing for merits review.

The EP Bill does not afford sufficient standing to Traditional Owners to review decisions.

Under the EP Bill, an 'affected person' includes only a person directly affected by the decision or a person who has made a genuine and valid submission during the licensing process. The definition of 'genuine and valid submission' is limited (under proposed section 277(2A) of the Act). The EP Bill does not propose to make reasons underpinning decision-making available upon request.

The Land Councils submit that:

- the grounds for standing should expressly include Aboriginal Land Trusts, Prescribed Bodies Corporates and Traditional Owners;
- the Territory Government must confirm that Traditional Owners fall within the definition of 'directly affected'; and

[6] Clauses 233D(3) and 233G, EP Bill.

- the EP Bill must be amended to make reasons available to Traditional Owners upon request.

3.5. The EP Bill gives too much discretion to the Minister.

The EP Bill does not set out the basis for the Minister's decisions to:

- approve standard conditions for a mining licence[7];
- review the risk criteria and standard conditions for a mining activity at any time;[8] and
- amend the risk criteria and standard conditions on completion of a review.[9]

While standard conditions will be published, there is no requirement that proposed standard conditions be made available for public comment. Further, the EP Bill does not contain any minimum standard for the conditions of a mining licence. It only states that the following conditions *may* be included:

- conditions that are necessary to manage the environmental impacts associated with the mining activities[10];
- conditions that may authorise or regulate the environmental impacts of certain activities[11];
- conditions for a mining operator to provide reports to the Minister[12]; and
- conditions about care and maintenance[13].

The Land Councils submit that the EP Bill must be amended to:

- provide minimum standard conditions for a mining licence which must be subject to consultation (see paragraph 3.6); and
- remedy the lack of transparency regarding decision making.

3.6. Standard conditions for a mining licence and risk criteria must be the subject of consultation before passing the EP Bill.

The Land Councils have significant concerns that the detail of how the regulatory scheme is proposed to work has not been finalised or subject to consultation. We understand that:

- the standard conditions and risk criteria will be modelled on the Queensland framework for environmental conditioning, which includes eligibility criteria for projects; and

[7] Clause 124T(1), EP Bill
[8] Clause 124U(1), EP Bill
[9] Clause 124V(1), EP Bill
[10] Clause 124W, EP Bill
[11] Clause 124X(1), EP Bill
[12] Clause 124Y(1), EP Bill
[13] Clause 124Z, EP Bill

- the Territory Government intends to consult on the standard conditions and risk criteria after the draft bills have passed.

In response, we consider that:

- If the NT context is to be modelled on the Queensland framework, then the Territory Government must develop a similarly comprehensive framework for the NT to complement any standard conditions developed. Queensland relies on the detailed requirements in the *Mineral Resources Act 1989* (Qld) (**QLD Mineral Resources Act**) to ensure there is an adequate understanding of the mining project itself. This informs regulation of the recovery of the resource in accordance with technical standards.

- Given the importance of the standard conditions and risk criteria, the Territory Government must consult on these matters *before* Parliament introduces the EP Bill.

- There is limited need for standard conditions to be developed because the N T is not inundated by multiple applications for mining interests. Most if not all applications and projects in the NT could be subject to tailored conditions. This would reflect the largely undeveloped nature of the industry.

- Any standard conditions adopted must be the floor, not the ceiling. This is especially important in a context where it is the current intention of the EP Bill is that the public is not consulted on mining licences with standard conditions which we disagree with (see paragraph 3.7 below).

- Investing in the development of standard conditions will not improve the standing of the NT but is likely to lead to a level of bureaucratic categorisation that is largely unnecessary.

3.7. There must be greater transparency and consultation on applications for mining licences.

The Land Councils submit that that the EP Bill must require all applications for mining licences to be advertised for public consultation. The EP Bill fails to remedy the present lack of transparency in the industry. This is because:

- Not *all* applications for mining licences are required to be advertised for public consultation.

- The EP Bill only requires the Minister to publish applications for modified condition and tailored condition mining licences[14] and invite persons to make written comments to the Minister on whether the licence should be granted or refused.[15]

- Further, this does not apply if:

    a. the application relates to a mining activity for which an environmental approval has been granted or is required,[16] and

[14] Clause 233S(1), EP Bill
[15] Clause 233T(2), EP Bill
[16] Clause 233S(2), EP Bill

b. the application is for a mining licence with standard conditions.

- The EP Bill currently requires that only holders of exploration licences that are undertaking exploration which will involve significant disturbance of a mining site should require a mining licence,[17] when it should require that all holders of exploration licences should obtain a mining licence. For example, an activity such as rock chipping may not constitute a significant disturbance to the physical environment (low ecological risk) but may constitute a significant disturbance to the socio-cultural and spiritual environment if the targeted outcrop is otherwise undisturbed and there has never been any survey or assessment of significance of any cultural heritage.

3.8. More information should be required for applications for mineral titles and mining licences.

The Land Councils are concerned that the EP Bill requires insufficient and inadequate information for a mining licence. The requirements for information for an Authorisation under the Mining Management Act are significantly more comprehensive.

With the proposed repeal of the Mining Management Act, the applicant will be required to provide less information than under the current regulatory framework. For example:

- Currently, the application for an Authorisation must be accompanied by a mining management plan[18] and the mining management plan must include the details set out in section 40(2) of the Mining Management Act.

- In contrast, when applying for a mineral title under the proposed regime, the applicant will only need to provide information about its 'technical work program'[19] and 'details of technical and financial resources'.[20]

- When applying for a standard condition mining licence, an applicant does not need to submit an assessment of the environmental risks and impacts associated with the mining activity.[21] The Minister will let the applicant know if there is any further information they need to assess the application.[22]

We do not support any reduction in the amount of information that must be submitted. The decision maker under the Mineral Titles Act is likely to be more open to challenge as there is little legislative guidance as to the basis on which decisions will be made.

If the reforms are to meet their stated objectives, the legislation must require that an applicant provide information as to:

[17] Clause 124L(2), EP Bill
[18] Section 36(2), Mining Management Act
[19] See the fact sheet titled "*ME: Technical Work Programs for Mineral Lease Applications*".
[20] See the Process Schematic (flowchart) – Apply for mineral title and licence process. See also Page 4 of the paper title "Regulation of Mining Activities Reform Summary", which reveals that there is no intention of increasing the information to be submitted as part of a technical work program.
[21] Clause 124ZC(3)(c), EP Bill.
[22] Clause 124ZC(f), EP Bill

- how the project has been designed and optimised for public benefit with reference to the specific commodity being mined (see, for example, section 317N of the QLD Mineral Resources Act); and

- details of its mine closure plans. This would be consistent with the West Australian Mine Closure Guidelines and approach which the Territory Government has been referring to as applicable.

We strongly urge the Territory Government to consider achieving consistency with one of the other major mining legislative frameworks in Western Australia or Queensland to ensure that critical information is submitted with an application for a mining title. For example, see requirements of sections 245, 317J and 317N of the QLD Mineral Resources Act.

3.9. Additional reasons for the Minister to revoke mining licences should be included.

The EP Bill provides that the Minister may revoke a licence for any of the reasons in clause 124ZZ (a)-(d). The Land Councils consider that additional reasons should be included for revocation, including:

- threatened non-compliance of environmental requirements; and

- threatened unauthorised environmental harms.

This would ensure that the regulatory regime is *proactive*, rather than *reactive*, in meeting its stated objectives.

3.10. There should be stronger provisions for comprehensive and costed rehabilitation and closure plans.

The rehabilitation and closure provisions in the EP Bill are deficient. Mine closure planning is recognised industry-wide as the primary regulatory tool to ensure that the public is not left with the burden of legacy mines and long-term care and maintenance mine sites. Adequate mine closure planning relies on a binding requirement for a fully costed rehabilitation and closure plan as part of the approvals process, and regular review throughout the life of the mine.

We are concerned that section 40(2)(g) of the Mining Management Act, which is proposed to be repealed by the EP Bill, will have no adequate replacement. This is a significant omission because:

- Section 40(2)(g) requires a mining management plan to include a plan and costing of closure activities. However, we note that inadequacy of this requirement as there is no requirement that such a plan be reviewed regularly throughout the life of the mine, including with the involvement of Traditional Owners.

- Clause 124N of the EP Bill provides that a mining licence issued for all mining activities relating to mining operations applies to any phase of mining activity associated with the mining or processing of minerals, including closure of the mining site and surrender of the related mining titles. This is not sufficient.

The Land Councils have repeatedly submitted on the necessity of rehabilitation and closure plans at the commencement of a mining project.[23] This is consistent with the West Australian Mine Closure Guidelines and approach and industry best practice.

The EP Bill must include a mandatory requirement to commission and develop a fully costed closure plan as part of the approvals process. This should be reviewed regularly throughout the life of a mine, including with the involvement of Traditional Owners.

The EP Bill must also:

- include mechanisms to ensure that the financial and technical requirements of mining operators to deliver rehabilitation requirements is assessed during the approvals process;[24]

- include specific requirements for the Minister to consider an operator's history of compliance with legislation and breaches of agreements with Traditional Owners, and track record of Aboriginal employment and contracting;

- include mechanisms to assess the financial and technical capacity of applicants to fulfil all rehabilitation and remediation obligations as specified in the mining licence and in any mining closure plan;[25]

- require that mine closure plans include financial provisioning for closure throughout production and operations (not merely unexpected closure), with security bonds calculated based on detailed mine closure plans as adjusted over time. This is consistent with the internal standards of most major resource companies; and

- require that plans, prepared in accordance with guidelines published by the Territory Government, form part of the binding compliance framework for a mining project. This would be consistent with the West Australian framework.[26]

Finally, the EP Bill fails to clarify portfolio responsibilities, in that, the Territory Government's feedback summary report of the consultation paper 'Regulation of mining activities environmental regulatory reform' (**feedback summary report**) notes that '*it will be the responsibility of DEPWS to ensure appropriate planning for, and completion of, remediation and rehabilitation requirements. It will be the responsibility of [Department of Industry, Tourism and Trade], acting on the information from DEPWS, to undertake the administrative processes associated with mine closure'.*

[23] See, for example, CLC and NLC joint feedback on the Mineral Development Taskforce Final Report dated 11 August 2023.
[24] Clause 44A(3) of the EP Bill would effectively allow the Minister to discount consideration of whether the applicant has previously failed to comply with licence conditions or health, safety and environment legislation.
[25] For example, a requirement could be included under clause 124ZZM(2) that the application be accompanied by supporting technical and financial information.
[26] The Western Australian Government has approved "*Statutory Guidelines for Mine Closure Plans"* under section 700 of the *Mining Act 1978* (WA) identifying the form and content required in a mine closure plan. These guidelines provide clarity and consistency.

However, the Land Councils are not aware that Department of Industry, Tourism and Trade (**DITT**) has any robust administrative processes associated with mine closure and has not overseen any projects to relinquishment on the basis of closure certification.

We submit that closure certification should logically sit with the environmental regulator with only the very last step of cancellation of the tenement remaining with DITT under the Mineral Titles Act.

3.11. Provisions around mining securities should be strengthened.

The Land Councils are concerned by the provisions in the EP Bill regarding mining securities including that the EP Bill:

- makes no change to how mining securities are calculated;
- only allows for the Minister or Chief Executive Officer to make a claim on mining security;
- fails to provide for Traditional Owners' and local communities' review of the security bonds when Traditional Owners and local Aboriginal communities often bear the brunt of negative externalities associated with poorly managed resources projects;
- does not improve transparency around calculations of securities; and
- recognises that a security bond may need to be retained beyond the term of a mining licence to meet post-closure monitoring and reporting requirements.[27] However, it does not extend to circumstances where remediation may be required.

The Land Councils have consistently raised concerns about how mining securities are calculated. Accurate calculation is dependent on adequate mine closure planning. We accordingly submit that the EP Bill must include:

- robust and risk-based mechanisms and requirements for ongoing monitoring and adjustment, and corresponding adjustment of costs and recalculation of securities;
- requirements to publish the methodology used to calculate the security bond amounts;
- requirements to publish the obligations in the environment management plan or environmental impact statement that the mining security underpins;
- clear mechanisms to allow Traditional Owners to:
    a. require security to be called on and applied to the rehabilitation. This is particularly essential in light of the Territory Government's record of rehabilitation attempts that have not been completed to the satisfaction of Traditional Owners, such as at Rum Jungle;

[27] Clause 132C(9), EP Bill

b. provide input into regular reviews of mining securities, with the outcomes of such reviews made public; and

c. request a review of securities on the basis of future long-term environmental impacts and associated social impacts;

- a form of clause 132C(9) which includes the retention of securities until any required remediation is completed.

3.12. Provisions regarding mines in care and maintenance should be strengthened.

Clause 124Z provides that conditions may be imposed on a licence in relation to a care and maintenance period. However, there is nothing in the EP Bill about the necessity of preparing a detailed care and maintenance plan.

The Land Councils urge the strengthening of the EP Bill in this regard because:

- Mines in care and maintenance are often a prelude to insolvency and unmanaged closure. They present a long-term imposition on the environment, traditional owners, taxpayers and the Territory Government.

- There are already multiple mines in care and maintenance in the Territory, including in:

  a. The NLC's region:

     - Nobles Nob (Aboriginal land)
     - Warrego (land subject to native title)
     - Gecko (land subject to native title)
     - Harts Range Garnet Mine (land subject to native title)
     - Jervois Mine (land subject to native title)
     - Edna Beryl Gold Mine (Aboriginal land)
     - Twin Bonanza gold mine (Aboriginal land)
     - L6 Surprise Oil Field (Aboriginal land)

  b. The NLC's region:

     - Browns Oxide (Aboriginal land)
     - Esmeralda Gold Project (land subject to native title)
     - Kazi Gold Project (land subject to native title)
     - Mt Porter (land subject to native title)
     - Nathan River Resources Project (land subject to native title)

- Roper Valley Iron Ore (status uncertain) (Aboriginal land and land subject to native title)
- Bootu Creek Mine (land subject to native title).

We submit that mines in care and maintenance must be actively managed. The EP Bill should include a requirement that the operator be notified when the mine goes into care and maintenance. Once notified, the following should occur:

- The operator must be required to prepare and regularly review and update a care and maintenance plan that identifies and addresses how environmental risks will be managed. The feedback summary report notes that '*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*'. The Land Councils do not agree with this position.

  While the Bill provides that conditions may be imposed on a mining licence in relation to a care and maintenance period,[28] this is not a substitute for a detailed care and maintenance plan.

- The care and maintenance plan should include an expected duration (no longer than 5 years), after which period:

  a. the company must either commence closure or submit for approval a comprehensive updated care and maintenance plan; and

  b. the Territory Government should be able to reject the care and maintenance plan.

- Traditional Owners must be consulted in relation to the care and maintenance plan before it is approved.

- The regulator should actively and regularly consider the likelihood of the operations being a stranded asset and should have the ability to force the operator to decommission and rehabilitate if care and maintenance status is not genuine.

3.13. Public reporting requirements should be improved.

The EP Bill contains weak public reporting requirements. The Land Councils consider that this is critical to the effectiveness of the proposed new regulatory framework.

The EP Bill does not require public reporting of:

- the effectiveness of compliance monitoring and enforcement activity. Under clause 124Y(2), a condition imposed on a mining licence may require a report to the Minister on the operator's compliance with the mining licence and with any other requirements in

[28] Clause 124Z, EP Bill

relation to the licence. There is no requirement that such reports received by the Minister be made publicly available; and

- all applications, information about the applicant's capacity, the outcome of decisions and estimates of reserves, unless these are reports submitted in compliance with a registration or licence condition.[29]

The Land Councils submit that there must be clear legislative requirements for this information to be publicly available.

3.14. Enforcement and compliance measures need to be strengthened and funded accordingly.

The EP Bill provides that compliance with a performance improvement plan is enforceable.[30] However, the Minister must not commence a civil or criminal proceeding in relation to an alleged contravention of the conditions of a mining licence that relates to a matter covered by a performance improvement program while the performance improvement program is in place.[31]

The Land Councils have concerns with this approach, particularly given that there are numerous steps that must be taken before the Minister can terminate a performance management program (see clause 124ZV). We submit that:

- the Territory Government must provide clear guidance on how third parties, including Traditional Owners, can report contraventions;

- a proponent's entry into a performance improvement plan should be a trigger to review the value of a mining security; and

- it is essential that DEPWS is adequately funded to undertake compliance and enforcement action to support implementation of the Bill.

3.15. Provisions regarding best practice progressive rehabilitation should be included.

The Land Councils request more detailed information on:

- how progressive rehabilitation will be implemented, including through legislation or policy; and

- how standard conditions will relate to progressive rehabilitation, if at all.

Ongoing and progressive rehabilitation is recognized as best practice.[32] However, the only reference to progressive rehabilitation is in clause 124W(c) of the EP Bill, which provides:

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[29] The EP Bill requires that all registration and licence conditions, and all reports or other material submitted in compliance with a registration or licence condition, be publically available.
[30] Clause 124ZZW, EP Bill
[31] Clause 124ZY, EP Bill
[32] *Productivity Commission, Resources Sector Regulation, Study Report (2020) (Leading Practice 7.11)*

> conditions imposed on an environmental (mining) licence may include any conditions that are necessary to manage the environmental impacts associated with the mining activities including requiring the mining operator to...for any area of a mining site where no further mining activity is proposed- prepare and implement rehabilitation and closure plans that maximise the progressive rehabilitation of the area as soon as practicable after mining activity ceases.

No further information has been provided. The EP Bill does not:

- include a definition of progressive rehabilitation;
- include strict, enforceable standards for:
  a. progressive rehabilitation; and
  b. best practice mine closure planning
- mandate specific progressive rehabilitation targets for all mining operations;
- require development approvals for mining projects to include conditions relating to progressive rehabilitation;[33]
- require that mining and exploration tenure renewal is dependent on delivery of progressive rehabilitation;
- amend all mine operations' permits to include fixed, non-negotiable rehabilitation ratios that are maintained through the life of the mine;
- impose financial penalties on companies for failing to undertake progressive rehabilitation.

3.16. Transitional arrangements are inadequate.

Our view is that the transitional arrangements are not sufficient to pave the way for the draft bills to be passed in their current form. This is because:

- Several large operations will head into closure after many decades of operation in the next 5 to 10 years.
- If the draft bills are passed, the unintended consequence will be that they are required to obtain a new mining licence very close to the final years of their operations.

The preferable course is to ensure that both the new regulatory framework is well understood and supported *prior* to coming into effect. This will avoid a protracted transitional period.

4. DRAFT LEGACY MINES BILL

4.1 The Legacy Mines Bill must comply with the Land Rights Act and the Aboriginal Land Act regarding entry onto Aboriginal land to carry out remediation activities.

[33] The provision in clause 124W(c) of the EP Bill is discretionary.

Similar to our comments in respect of clause 124ZZZM(7) of the EP Bill, the Land Councils urge the Territory Government to:

- comprehensively set out its view as to the interaction between clause 13 of the Legacy Mines Bill and the Land Rights Act;
- give Land Councils a chance to respond; and
- amend clause 13 of the Legacy Mines Bill to ensure compliance with the Land Rights Act.

This must occur *prior* to Parliament's consideration of the Legacy Mines Bill.

The Legacy Mines Bill proposes to allow a person to enter land or premises to allow a person to enter land or premises to carry out remediation activities, despite the land being Aboriginal land, without complying with the Land Rights Act and Aboriginal Land Act.[34]

We repeat our submissions above. In summary:

- Section 73(1)(b) of the Land Rights Act does not provide that the Territory Government may make laws allowing extensive access for remediation activities on Aboriginal land.
- An entry for that purpose and activity would detract from the rights conferred upon an Aboriginal Land Trust by the fee simple grant, and alter the scheme of the Land Rights Act for conferring rights on others to enter and use Aboriginal land.

4.2 The definition of 'legacy mines' is not sufficiently targeted.

The Land Councils are concerned that:

- The Legacy Mine Bill includes an insufficiently nuanced definition of 'legacy mines' because by simply referring to whether or not a security is held, the definition will potentially capture large high risk sites such as Rum Jungle and Redbank Mine.[35]
- Clause 11 of the Legacy Mines Bill makes provision for the Chief Executive Officer to publish a report giving details on the expenditure of money from the Mining Rehabilitation Fund. However, this does not include a requirement to detail any remediation work conducted.

We submit that:

- The definition of 'legacy mines' should include criteria as to scale and risk and be confined to smaller artisanal type workings and infrastructure.
- The less onerous requirements in this Bill should be expressly confined to smaller low risk sites.

[34] Clause 13(5).

[35] The NT holds no security for Ranger Uranium Mine and this definition would therefore apply to the Ranger Uranium Mine as an unintended consequence.

- Mining remediation levy and mining remediation fund should be accompanied by requirements for ongoing monitoring of a company's financial status, to ensure early identification of risk.

- A report by the Chief Executive Officer under clause 11 of the Legacy Mines Bill should include the details of any remediation work conducted.

4.3 Regulations for the Legacy Mines Bill must be made available for comment.

The Legacy Mines Bill states that the regulations may provide for several key matters, including matters in relation to the Mining Remediation Fund.[36] However, the draft regulations have not been published for comment and submissions.

It is critical that the draft regulations be released for public consultation prior to passage of the legislation. The Land Councils cannot assess the overall impact of the Legacy Mines Bill without any awareness of the content of such an important piece of the legislative puzzle.

The Territory Government has not provided an adequate opportunity for consideration of key matters that may be legislated but not subject to Parliamentary oversight. We request an opportunity to comment on any draft regulations before they are made.

4.4 DEPWS should be responsible for environmental management and rehabilitation of legacy mines.

We are concerned that responsibility for the management of legacy mines remains with DITT. The definition of a legacy mine site[37] currently includes large and high risk sites such as the Redback Mine and Rum Jungle.

DEPWS should be responsible for the environmental management and rehabilitation of legacy mines while DITT undertakes the role of proponent and accesses the remediation funds.

4.5 Remediation activity must be subject to statutory approvals.

The Legacy Mines Bill permits a person to carry out remediation activity without obtaining statutory approvals as prescribed by regulations.[38] The ambit of this provision is unclear.

The Territory Government has a poor record of rehabilitation outcomes to date. This is exemplified by repeated failed rehabilitation attempts at Rum Jungle. Consequently, the Land Councils cannot support remediation activities being carried out without:

- prior environmental impact assessment and environmental approval. For example, DITT currently holds an environmental approval for remediation works to be undertaken at Rum Jungle;

- sacred site and cultural heritage approval – see paragraph 2.2; and

[36] Clauses 7(3) and 19(1), Legacy Mines Bill.
[37] Clause 4, Legacy Mines Bill.
[38] Clause 19, Legacy Mines Bill.

- approval for a water licence under the *Water Act 1992* (NT).

4.6 The impact of the Legacy Mines Bill on specific sites is unclear.

The NLC requests further information on how the proposed legislative amendments will affect the following sites:

- Ranger Uranium Mine: The role of the Territory Government is limited to particular provisions under the Mining Management Act, which is proposed to be repealed with these reforms.

- Rum Jungle: Given that an environmental approval has been issued, and accordingly, ongoing environmental oversight is critical, the NLC considers it appropriate that DEPWS be responsible for environmental management of Rum Jungle. It should not be included within the definition of a 'legacy mine' site or subject to the Legacy Mines Bill.

- Redbank Mine: The NLC does not support the application of provisions that provide exemptions from approvals in the Legacy Mines Bill to this site. The standard of the remediation works required means that DITT should be subject to the EP Act and should obtain a mining licence. Independent assessment by the NT EPA will provide greater public confidence in the commitment of DITT to independently verifiable rehabilitation outcomes.