

Serial
Legacy Mines Remediation Bill 2023
Ms Manison

A Bill for an Act to provide for the Mining Remediation Fund, the remediation of legacy mine sites and legacy mine features, payment of the mining remediation levy and for related purposes

CONSULTATION DRAFT ONLY

**PREPARED FOR THE DEPARTMENT OF INDUSTRY, TOURISM AND
TRADE**

NORTHERN TERRITORY OF AUSTRALIA

LEGACY MINES REMEDIATION ACT 2023

Act No. [] of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2023

An Act to provide for the Mining Remediation Fund, the remediation of legacy mine sites and legacy mine features, payment of the mining remediation levy and for related purposes

[Assented to [] 2023]
[Introduced [] 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Legacy Mines Remediation Act 2023*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 28 August 2025, it commences on that day.

3 Definitions

In this Act:

authorised person means a person authorised under section 13.

engineered feature means a feature of land that is engineered for a purpose related to a mining activity.

Examples for definition **engineered feature** include the following:

- 1 waste rock dumps;
- 2 dam walls;
- 3 pits;
- 4 portals;
- 5 shafts;
- 6 tailings storage facilities.

environment, see section 6 of the *Environment Protection Act 2019*.

environmental harm, see section 7 of the *Environment Protection Act 2019*.

environmental (mining) licence, see section 4 of the *Environment Protection Act 2019*.

Fund means the Mining Remediation Fund continued under section 7.

infrastructure includes buildings, conveyors, fences, processing facilities, pipelines, roads, storage tanks, wharfs, workers camps and workshops.

land means land within the jurisdictional limits of the Territory and includes waters within those limits.

legacy mine feature, see section 5.

legacy mine site, see section 4.

levy, means the mining remediation levy mentioned in section 22.

mine remediation officer means a person appointed as a mine remediation officer under section 24.

mining activity, see section 13A of the *Environment Protection Act 2019*.

mining operator, see section 4 of the *Environment Protection Act 2019*.

mining security, see section 4 of the *Environment Protection Act 2019*.

mining site, see section 4 of the *Environment Protection Act 2019*.

plant includes appliances, equipment, implements, machinery, pressure vessels, scaffolding and tools, any component of the plant and anything fitted or connected to the plant.

premises includes plant and infrastructure and the land on which the premises are situated.

remediation activity, see section 9(2).

waste, see section 4(1) of the *Waste Management and Pollution Control Act 1998*.

Note for section 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

4 Legacy mine site

- (1) For this Act, a **legacy mine site** is an area of land:
- (a) on which mining activities have been carried out but no mining security is held under Part 7, Division 1A of the *Environment Protection Act 2019* in relation to those activities; and
 - (b) in respect of which there is no current:
 - (i) extractive mineral lease; or
 - (ii) extractive mineral permit; or
 - (iii) mineral authority; or
 - (iv) mineral lease; or
 - (v) non-compliant existing interest.

- (2) In this section:

extractive mineral lease, see section 54(1) of the *Mineral Titles Act 2010*.

extractive mineral permit, see section 50(1) of the *Mineral Titles Act 2010*.

mineral authority, see section 118(2) of the *Mineral Titles Act 2010*.

mineral lease, see section 48(1) of the *Mineral Titles Act 2010*.

non-compliant existing interest, see section 204(1) of the *Mineral Titles Act 2010*.

5 Legacy mine feature

A **legacy mine feature** is any plant, infrastructure, engineered feature or other feature that:

- (a) was built or used to carry out a mining activity; and
- (b) is no longer used to carry out a mining activity; and
- (c) in relation to which no mining security is held under Part 7, Division 1A of the *Environment Protection Act 2019*.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Mining Remediation Fund**7 Mining Remediation Fund**

- (1) The Mining Remediation Fund established under the *Mining Management Act 2001* is continued.
- (2) Any interest on money held in the Fund is to be paid into the Fund.
- (3) The regulations may prescribe matters in relation to the Fund.

8 Purpose of Fund

- (1) The purpose of the Fund is to hold money in trust to be used by the Agency in connection with:
 - (a) minimising or remediating environmental harm caused by mining activities carried out on legacy mine sites or by legacy mine features; and
 - (b) conducting investigations and research related to environmental harm caused by mining activities carried out on legacy mine sites or by legacy mine features.

- (2) To avoid doubt, money held in the Fund must not be used to carry out a remediation activity in relation to:
- (a) environmental harm caused by a mining activity for which mining security is held; or
 - (b) environmental harm caused by a legacy mine feature on a mining site if the mining operator for the site caused or contributed to the harm.

9 Payments from Fund

- (1) This section does not limit the purposes for which money in the Fund may be used under section 8(1).
- (2) Payments may be made from the Fund for costs and expenses incurred in relation to any of the following activities (each a **remediation activity**):
- (a) investigating the condition of a legacy mine site or legacy mine feature or anything on, in or near a legacy mine site or legacy mine feature;
 - (b) assessing any risk of environmental harm related to a legacy mine site or a legacy mine feature;
 - (c) decommissioning, removing, destroying, modifying or making safe any legacy mine feature;
 - (d) monitoring, mitigating, managing, removing, treating or cleaning up any waste or other materials, including water, on a legacy mine site or land affected by mining activities carried out on a legacy mine site or by a legacy mine feature;
 - (e) maintaining, managing, repairing, improving or monitoring the condition of land affected by mining activities carried out on a legacy mine site or by a legacy mine feature, including the following:
 - (i) physically stabilising terrain;
 - (ii) revegetating the land;
 - (iii) restoring ecosystem functions on the land;
 - (f) mitigating, managing, removing or monitoring any risks to public health or safety or to the environment caused by mining activities carried out on a legacy mine site or by a legacy mine feature.

- (3) Payments may be made from the Fund for costs and expenses incurred in relation to any of the following:
- (a) conducting research or scientific studies in relation to environmental harm, or the remediation of environmental harm, caused by mining activities carried out on a legacy mine site or by a legacy mine feature;
 - (b) providing incentives to parties to facilitate the carrying out of remediation activities in relation to legacy mine sites and legacy mine features;
 - (c) legal and audit services required to manage legacy mine sites or legacy mine features.

Part 3 Legacy mine sites and legacy mine features

10 Reserved legacy mine sites

- (1) The Minister may, by *Gazette* notice, declare a legacy mine site to be a reserved legacy mine site:
- (a) if the Minister is satisfied any criteria prescribed by the regulations are met; and
 - (b) after following any procedures prescribed by regulation.

Note for subsection (1)

Section 64A of the Mineral Titles Act 2010 provides that an application for certain mineral titles may not be made for land that is a reserved legacy mine site.

- (2) The regulations may provide for matters relating to the declaration of a reserved legacy mine site, including any of the following:
- (a) the form and content of declarations;
 - (b) the persons who must be given a copy of declarations;
 - (c) submissions that may be made about an intended declaration.

11 Report on expenditure in relation to reserved legacy mine sites

The Chief Executive Officer must, by 31 October following the end of each financial year, publish a report on the Agency's website giving details of the expenditure of money from the Fund in relation to reserved legacy mine sites.

12 Registers

- (1) The Chief Executive Officer must maintain a public register of reserved legacy mine sites.
- (2) The Chief Executive Officer may maintain a public register of legacy mine features and legacy mine sites that are not reserved legacy mine sites.
- (3) The regulations may prescribe the information to be kept on a register, if any.

Part 4 Remediation activities**13 Authorisation to carry out remediation activity**

- (1) The Minister may authorise a person to:
 - (a) carry out a specified remediation activity on or in relation to a legacy mine site or a legacy mine feature; and
 - (b) to enter land or premises for the purpose of carrying out the remediation activity.

Note for subsection (1)

An environmental (mining) licence is not required to carry out an activity that is authorised under this subsection. See section 124B(4) of the Environment Protection Act 2019.

- (2) An authorised person is not permitted to enter residential premises under this Act.
- (3) An authorised person may only enter land or premises:
 - (a) with the consent of the owner or occupier of land or premises; or
 - (b) if the person gives at least 10 business days prior written notice to the owner or occupier of land or premises; or
 - (c) in an emergency, if there is a risk of environmental harm if a remediation activity is not carried out immediately.
- (4) An authorised person entering land or premises under subsection (3)(c) must:
 - (a) if possible, give oral notice of the entry to the owner or occupier of the land or premises as soon as possible before, on or after that entry; and

- (b) give written notice of the entry to the owner or occupier of the land or premises of the matters prescribed by regulation.
- (5) The notice under subsection (3)(b) or (4) must inform the owner or occupier of the land or premises of the matters prescribed by regulation.
- (6) The power of a person to enter land or premises under this section may be exercised, despite:
 - (a) the land being, or the premises being on, Aboriginal land; and
 - (b) the person not holding a permit under the *Aboriginal Land Act 1978* to enter or remain on Aboriginal land.

14 Powers on entry

An authorised person may, on entering land or premises under the authorisation, do any of the following to carry out the authorised remediation activity:

- (a) inspect the land or premises and anything found there;
- (b) dig up any land and operate any machinery or equipment on the land;
- (c) bring equipment, machinery and materials onto the land or premises and install and maintain any equipment, machinery or materials;
- (d) take photographs and make sketches or other records of the land or premises;
- (e) measure anything, or take samples of anything, on the land or premises;
- (f) take any other action reasonably required to carry out the authorised remediation activity.

15 Duties on entry

An authorised person:

- (a) must take reasonable steps to minimise disruption to the owner or occupier of land or premises caused by the entry to the land or premises and the carrying out of an authorised remediation activity; and

- (b) must not remain on the land or premises any longer than is reasonably necessary to carry out the authorised remediation activity.

16 Offence to obstruct

- (1) A person commits an offence if:
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct obstructs an authorised person from carrying out a remediation activity that is authorised under this Part and the person is reckless in relation to that result.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (3) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (2).

17 Offence to fail to give notice

- (1) A person commits an offence if:
 - (a) the person is required to give a notice under section 13(3) or (4); and
 - (b) the person contravenes that requirement.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

18 Offence to fail to comply with duty on entry

- (1) A person commits an offence if:
 - (a) the person has a duty under section 15; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of that duty and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(a).

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

19 Remediation activity without prescribed statutory approval

- (1) Subject to sections 20 and 21, an authorisation under section 13 may authorise a person to carry out a remediation activity without obtaining a statutory approval of a kind prescribed by regulation that would ordinarily be required to carry out the activity.
- (2) Despite any provision in any Act to the contrary, the person may carry out the activity without obtaining the statutory approval.
- (3) The person incurs no liability to a penalty under the Act governing the statutory approval for complying with subsection (2).
- (4) Subsections (2) and (3) have effect despite anything to the contrary in the Act governing the statutory approval.

20 Notice to prescribed statutory decision-maker of proposed authorisation under section 13

- (1) The Minister must take action under subsection (2) if:
 - (a) the Minister proposes to grant an authorisation to a person under section 13; and
 - (b) but for section 19, a statutory approval would be required for that activity; and
 - (c) section 21 does not apply in relation to the proposed authorisation.
- (2) The Minister must:
 - (a) give notice of the proposed authorisation to the statutory decision-maker responsible for granting the statutory approval; and
 - (b) consider any written comments received within the time specified in the notice from the statutory decision-maker.
- (3) The notice must be given before the Minister gives an authorisation under section 13.
- (4) The time specified in the notice must be at least 10 business days.

21 Notice to prescribed statutory decision-maker of proposed authorisation under section 13 – imminent risk of environmental harm

- (1) The Minister must take an action under subsection (2) if:
 - (a) the Minister believes on reasonable grounds that:
 - (i) there is a serious and imminent risk of environmental harm caused by mining activities carried out on a legacy mine site or a legacy mine feature; and
 - (ii) a remediation activity must urgently be taken to alleviate that risk; and
 - (b) the Minister authorises, or proposes to authorise, a person to carry out the activity under section 13; and
 - (c) but for section 19, a statutory approval would be required for that activity.
- (2) The Minister must:
 - (a) give notice of the authorisation to the statutory decision-maker responsible for granting the statutory approval as soon as practicable after granting the authorisation; and
 - (b) consider any written comments received from the statutory decision-maker within the time specified in the notice.

Part 5 Mining remediation levy**22 Mining remediation levy**

- (1) The ***mining remediation levy*** is a tax in relation to mining activities that is levied for the purpose of providing revenue:
 - (a) for the Fund; and
 - (b) for the effective administration of this Act.
- (2) The regulations may provide for matters in relation to the levy.

23 Amount and payment of levy

- (1) A mining operator who carries out mining activities under an environmental (mining) licence must pay an annual levy in accordance with this section and the regulations.

- (2) Subject to subsection (3), the annual levy is equal to 1% of the mining security provided by the operator.
- (3) The Minister may, by *Gazette* notice, determine the minimum levy amount that is payable under this Act.
- (4) If the amount of the levy for an operator under subsection (2) is less than the minimum levy amount payable, the operator is not required to pay the levy.
- (5) The levy is non-refundable.
- (6) A mining operator commits an offence if the mining operator:
 - (a) is required to pay the levy under this section; and
 - (b) fails to pay the levy as required.Maximum penalty: 100 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.

Part 6 Mine remediation officers

24 Appointment of mine remediation officer

- (1) The Chief Executive Officer may, in writing, appoint a person to be a mine remediation officer.
- (2) The appointment of a mine remediation officer may be subject to conditions specified in the instrument of appointment.
- (3) The Minister must be satisfied that a person appointed under this section has the appropriate competencies or adequate experience required for the performance of functions as a mine remediation officer.
- (4) A mine remediation officer may perform the functions and exercise the powers that are imposed or conferred on the officer under this Act.

25 Identity cards

- (1) The Chief Executive Officer must give a mine remediation officer an identity card containing:
 - (a) the officer's name, signature and photograph; and
 - (b) the date of appointment of the officer and the date on which the appointment is to cease (if applicable).

- (2) A mine remediation officer to whom a card is issued who is exercising a power or performing a function under this Act must produce the card for inspection if requested to do so by any person affected by the exercise of the power or the exercise of the function.
- (3) A person who ceases to be a mine remediation officer must return the person's identity card to the Chief Executive Officer as soon as practicable after ceasing to be a mine remediation officer.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

26 Functions of mine remediation officer

Subject to the conditions of a mine remediation officer's appointment, a mine remediation officer has the following functions:

- (a) to inspect, audit and investigate legacy mine sites and legacy mine features and land affected by a legacy mine site or a legacy mine feature to assess:
 - (i) risks of environmental harm; and
 - (ii) whether any remediation activities should be taken in relation to the legacy mine site or legacy mine feature;
- (b) to ensure that remediation activities are undertaken to prevent or reduce environmental harm or the risk of environmental harm caused by legacy mine sites and legacy mine features;
- (c) to receive and investigate complaints about legacy mine sites and legacy mine features;
- (d) to provide advice and information to the Minister, the Chief Executive Officer, persons involved in mining activities and the public about legacy mine sites and legacy mine features.

27 Powers of mine remediation officer

- (1) Subject to this Act, a mine remediation officer may do the following:
 - (a) subject to subsection (2), enter and inspect any of the following at any reasonable time, with the assistants the officer considers necessary, but not so as to unnecessarily impede or obstruct mining activities:
 - (i) land that is a legacy mine site and any premises on the land;

- (ii) land or premises that is, or on which there is, a legacy mine feature;
 - (iii) land or premises affected by a legacy mine site or legacy mine feature;
 - (b) require the assistance of a person, including the owner of the land or premises, a mining operator carrying out mining activities on the land or any contractor or worker of the operator, to obtain access to parts of the land or premises or to information necessary to enable the mine remediation officer to perform the officer's functions;
 - (c) require a person to provide information that is reasonably necessary to assist the mine remediation officer to perform a function under this Act.
- (2) A mine remediation officer may enter land or premises under subsection (1)(a) only after giving prior written notice of the entry to:
- (a) the owner of the land or premises; or
 - (b) if the land or premises is on a mining site – the mining operator for the mining site.
- (3) The power of a mine remediation officer to enter land or premises under subsection (1)(a) may be exercised, despite:
- (a) the land being, or the premises being on, Aboriginal land; and
 - (b) the officer not holding a permit under the *Aboriginal Land Act 1978* to enter or remain on Aboriginal land.
- (4) A person given a requirement under subsection (1) commits an offence if the person fails to comply with the requirement.
- Maximum penalty: 100 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.
- (7) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (6).

28 Obstruction of mine remediation officer

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and

- (b) the other person is a mine remediation officer; and
- (c) the mine remediation officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(b).
- (3) In this section:

acting in an official capacity, in relation to a mine remediation officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

obstruct includes hinder and resist.

Part 7 Miscellaneous matters

29 Minister may request information

- (1) The Minister may give the operator for a mining site a written notice requiring the operator to provide the Minister with specified information about a legacy mine feature located on the mining site within the time specified in the notice.
- (2) An operator given a notice under subsection (1) commits an offence if the operator fails to comply with the notice.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

30 Delegation

- (1) The Minister may delegate any of the Minister's powers or functions under this Act to the Chief Executive Officer or a person.
- (2) The Chief Executive Officer may delegate any of the Chief Executive Officer's powers or functions under this Act to a person.

31 Regulations

The Administrator may make regulations under this Act.

Note for section 31

See section 65 of the Interpretation Act 1978.

Part 8 Repeals

32 Repeal of Acts

The following Acts are repealed:

- (a) *Mining Management Act 2001* (No. 43 of 2001);
- (b) *Mining Management Amendment Act 2011* (No. 35 of 2011);
- (c) *Mining Management Amendment Act 2013* (No. 22 of 2013).

Part 9 Consequential amendments to Mineral Titles Act 2010

33 Act amended

This Part amends the *Mineral Titles Act 2010*.

34 Section 64A inserted

After section 64

insert

64A Grant application – reserved legacy mine site

A person is not entitled to apply for the grant of an EL, EML, EMP or ML for land that is a reserved legacy mine site under section 10 of the *Legacy Mines Remediation Act 2023*.

35 Repeal of Part

This Part is repealed on the day after it commences.