



Submission: NT Mining reform

Environment Policy
Department of Environment, Parks and Water Security
DARWIN NT 0801
environment.policy@nt.gov.au

Legacy Mines Unit
Department of Industry, Tourism and Trade
DARWIN NT 0801
lm.ditt@nt.gov.au

18 September 2023

Submission to NT mining reform: Environment Protection Legislation Amendment (Mining) Bill 2023 and Draft Legacy Mines Remediation Bill 2023

Introduction & Context

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. We are committed to protecting, promoting and restoring wilderness across the continent for the survival and ongoing evolution of life on Earth. From community activism to national campaigns, we seek to give nature a voice to support the life that supports us all. We are powered by more than 150,000 supporters from all walks of life.

The Wilderness Society welcomes the opportunity to make a submission on the Environment Protection Legislation Amendment (Mining) Bill 2023, and acknowledges that the Northern Territory (NT) government has committed to a once in a generation mining law reform, after decades of regulation regime failure, the results of which remote communities and Traditional Owners are still grappling with.

The NT has a long and chequered history of its ability to regulate mining activities. The first environmental action that the Wilderness Society was involved with was to halt and remediate mining at Jabiluka in 1983, as part of a vast movement alongside the Environment Centre of the NT (ECNT) and many other groups, who made their voices heard despite the lack of recognition of rights belonging to First Nations and the broader community and proper regulation and protection for the outstanding universal values of the region.

The NT's nature is renowned for its outstanding natural beauty, and its enduring cultural landscapes are globally significant. The Territory has some of the most expansive and intact ecological systems, including some of the last free-flowing tropical river systems, in the

The Wilderness Society

GPO Box 716, Hobart
Tasmania, Australia 7001

1800 030 641
ABN: 18 611 229 086

wilderness.org.au
info@wilderness.org.au

Life. Support.

developed world. In particular, the expansive savanna woodlands stretching from Cape York to the Kimberley form the largest remaining intact savanna biome on earth¹. Yet, recent research has revealed that three of the Northern Territory's ecosystems – the tropical savanna, the arid zone and its coastal mangroves – in fact meet the criteria of “collapsing” due to climate impacts, biodiversity loss caused by habitat clearing and mismanagement of weeds, ferals and fire².

The Territory's laws currently render the government unable to properly regulate mining. Examples of the regulatory regime failing to protect the environment in recent times include the controversial McArthur River Mine and Frances Creek Mine, while historical issues with mining are prevalent with legacy mines such as Ranger, Rum Jungle, Redbank and many others. Decades of poor mining practices in the NT have substantially impacted the public's confidence in the regulatory regime and the industry, and continue to impact globally significant cultural landscapes, such as Kakadu National Park.

The NT is at a crossroads, with a renewed drive for ‘transition minerals’ urgently requiring regulatory reform to ensure that innovative and adaptable practices are undertaken to minimise the loss of cultural and environmental values.

This is a once-in-a-generation opportunity to fix the NT's mining laws and regulatory system by: considering the clearing of native vegetation, ensuring the environment department leads on the calculation of security bonds, and embedding merits review for mining licensing decisions to strengthen Traditional Owner rights and community rights.

In addition to specific amendments and suggestions on the laws, The Wilderness Society calls for a greater evidence basis to be built to ensure that decisions can be made reviewing all available cultural heritage and natural assets, and ensure that there is a evidence-based strategic plan to map out sustainable development, for future generations of Territorians.

NT Mining reform: overarching reflections

On the overall objectives for the reform, a suggestion that could create overall better outcomes for the NT could be to expand the three current overarching objectives of: build investor confidence, better environmental outcomes and build community confidence to five objectives:

1. Ensure the highest standards of environmental protection
2. Meaningfully engage with stakeholders
3. Improve transparency and accountability in mining to deliver a greater share of benefit
4. Minimise environmental and financial liabilities
5. Create more opportunities, skills and training for Territorians that deliver a greater benefit from

The opportunity to reform the mining law processes and remove conflicts of interest through the Minister for the Environment and the Department of Environment, Parks and Water Security (DEPWS) being responsible for the environmental regulation of the mining industry, is a noteworthy step in the right direction. However, It is not clear at this stage how the new regime will be funded and resourced. There will be significant costs of not only reforming the system, but ongoing administrative costs including resourcing and training suitable operational staff.

¹ Woinarski, J., Mackey, B., Nix, H., Traill, B (2007) The Nature of North Australia: Its natural values, ecological processes and future prospects. ANU Press.

²<https://theconversation.com/lets-get-this-straight-habitatloss-is-the-number-one-threat-to-australias-species-85674>.

One of the most significant environmental challenges faced by the Territory are the long-term environmental impacts posed by mining projects, long after they stop operating. Thus, the Wilderness Society supports greater recognition that mine sites require monitoring, management and reporting after they finish operating.

Mines in open-ended care and maintenance in the NT carry significant environmental legacy issues. We support the express requirements for mines in care and maintenance, yet we recommend strengthening this by only allowing mines to enter care and maintenance in exceptional circumstances, and only for a specified time, to ensure that there is corporate accountability for these projects, and they don't add to the legacy of degraded lands with in some cases toxic legacies, which are left for communities and the government to clean up.

Recommendations:

- **Expand the objectives of the reform to five areas:** Ensure the highest standards of environmental protection, Meaningfully engage with stakeholders, Improve transparency and accountability in mining to deliver a greater share of benefit, Minimise environmental and financial liabilities, Create more opportunities, skills and training for Territorians that deliver a greater benefit from.
- **Secure the Minister for the Environment and the Department of Environment, Parks and Water Security (DEPWS) as the decision-maker responsible for the environmental regulation of the mining industry.**
- **Resource DEPWS accordingly to be able to address the need for enhanced enforcement and compliance activities**
- **Require monitoring and management and reporting of mines after they finish operating.**
- **Only allowing mines to enter care and maintenance in exceptional circumstances, and only for a specified time, to ensure that there is corporate accountability**

Strengthening Community Rights

It is imperative that local communities have their environmental community rights strengthened across these reforms which practically means engagement early and often in proposed developments, from the exploration stage. Two international declarations are also important considerations for engagement and consultation best practice standards.

Australia is a signed up to the Rio Declaration on the Environmental and Development 30 years ago, which in Principle 10³ sets out inalienable community rights that should be embedded in law and practice:

- 1) **The right to know**—to access the information that authorities hold.
- 2) **The right to participate**—to have a genuine say in decision-making.
- 3) **The right to challenge**—to seek legal remedy if decisions are made illegally or not in the public interest.

This review of mining laws is a prime opportunity to strengthen community rights in law and practice, and we welcome the opportunity to comment on the draft bill which has several opportunities to strengthen different community rights.

³ United Nations. (1992, June 3-14). Annex I: Rio Declaration on Environment and Development (Principle 10). Report of the United Nations Conference on Environment and Development (A/ CONF/151/26/Rev.1, Vol.1)

Access to accessible and comprehensible environmental information:

The Wilderness Society supports the public having better access to information about proposed and operating mines in their communities, through the requirement to publish environmental (mining) licences (Mining Licences), transfers of Mining Licences, security bond amounts and plans submitted by operators under the legislation and licence conditions. An improvement on this baseline, would be to ensure all this information is shared prior to decisions being made, to allow for informed public participation in environmental decision-making. This will make it far easier for members of the public to hold operators to account, including by being able to scrutinise any detailed plans submitted under licence conditions.

The public and decision-makers alike need access to further information about the cultural and natural values of the region, the mining licence is proposed in, in order to take a view of the cumulative impacts of a region, and ensure that globally significant values of a region, are monitored and protected for future generations. See more below on how inclusive decision-making can significantly improve the evidence basis and available information for decision-makers, leading to better decisions being made.

Public consultation and participation in environmental decision-making:

In the current proposed draft of the bill, there are some opportunities for public consultation during the EIA process which leads to an Environmental Approval. However, the opportunities for public comment depend on the tier or method of EIA adopted. The Wilderness Society recommends strengthening this requirement to allow the public to comment and be consulted on all Mining Licence applications.

Many of the proposals for mining in the NT will fall on Traditional Owners' native title land, or Aboriginal Freehold land. There needs to be a much further expanded opportunity for consultation and participation in environmental decision-making for local communities and Traditional Owners, which should be conducted early and often in the process before any decisions are made to grant mining licences to explore for minerals. Investing in local engagement processes and two-way communication and obtaining free, prior and informed consent (FPIC) of First Nations people have been revealed as crucial tools to mitigate the risks of costly community conflict.⁴

Decades of research, theory and community experience have highlighted the value of meaningful community participation in decision-making⁵, including that it:

- encourages trust and transparency between stakeholders when they can see how and why decisions are made, and can see that their needs are being considered in the process;
- gives governments and proponents early notice of social concerns and issues, putting them in a better position to deal with them proactively;
- improves the accountability of decision-makers, and reduces the need for adversarial action by communities whose views have not been heard; and
- provides an opportunity for decision-makers to understand and take into account Traditional Ecological Knowledge and other sources of information and expertise.

⁴ Locke, A., Munden, L., Feyertag, J. and Bowie, B., *Assessing the Costs of Tenure Risks to Agribusiness*, ODI and TMP Systems (Feb. 2019)

⁵ Harding, R. (1998) *Environmental decision-making: the roles of scientists, engineers and the public*. The Federation Press; Davis, R. and Franks, D., *Costs of company-community conflict in the extractives sector*, Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School (2014); Fredericks, C., et al., *Social Cost and Material Loss: The Dakota Access Pipeline*, First Peoples Worldwide and University of Colorado Boulder (November 2018); Drost, S., Rijk, G., Piotrowski, M., and Wiggs, C., *Oil Palm Growers Exposed to USD 0.4-5.9B in Social Compensation Risk*, Chain Reaction Research (Dec. 9, 2019).

Access to justice, third party rights and extended merits review:

Strong compliance and enforcement mechanisms make it easier to stop environmental incidents before they arise and deter and punish operators who may do the wrong thing.

For the draft bill, we support DEPWS being able to draw on a range of compliance and enforcement mechanisms to hold operators to account for the environmental impacts caused by mining activities. We are concerned that performance management programs may be in place for a long time while exempting operators from liability.

Affected people and communities should be able to hold operators to account including to enforce rehabilitation where required, this is known as third party rights. It is a much needed mechanism, to support government enforcement and compliance, as often the communities are the first to find or experience adverse impacts.

While it's a step forward that merits review is drafted for the draft Legacy Mines Remediation Bill (2023), merits review provisions in the draft EP Bill should be extended to allow for review of Mining Licences in the Tribunal, even where the relevant mining activities are also subject to an Environmental Approval.

If the EP Act is operating in the way it is intended, then the operations with the most significant environmental impact should be subject to an Environmental Approval, as well as a Mining Licence. However, in those circumstances, there will be no merits review of the conditions in either the Mining Licence or the Environmental Approval. This is a perverse outcome which should be remedied.

Recommendations:

- **Embedded mandatory publishing of environmental (mining) licences (Mining Licences), transfers of Mining Licences, security bond amounts and plans submitted by operators under the legislation and licence conditions.**
- **Expand public consultation to all forms of Mining Licence applications, and allow the community the opportunity to participate in environmental decision-making.**
- **Strengthen current compliance and enforcement mechanisms, through embedding third party rights and merits review provisions in both the Environment Protection Legislation Amendment (Mining) Bill 2023 & Draft Legacy Mines Remediation Bill 2023.**

Recognising Traditional Owners' rights

Traditional Owners have unique internationally-recognised rights that should be enshrined in Australian law and practice, as set out by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other UN agreements.

UNDRIP codified a universal framework of minimum standards for the survival, dignity and well-being of the First Nations peoples of the world—a declaration that Australia endorsed in 2009 but is yet to implement.

Over thousands of generations, hundreds of culturally diverse First Nations communities have lived on this continent we call Australia, living as one with cultural landscapes and applying sustainable management and cultural practices. First Nations communities continue to remain strongly connected with their living culture, despite legal and political systems continuing to deny and disrespect their cultural authority and human rights.

The destruction of Juukan Gorge sacred sites highlights the systematic failure to embed Indigenous rights, as listed in the UNDRIP, in relevant Commonwealth, state and Territory laws and practice. Protection of sacred sites should be mapped (as per below) and considered before any assessment or decision is made about mining licensing.

Indigenous rights, including to give or withhold free, prior and informed consent (FPIC), need to be embedded in the laws and practices of all jurisdictions of Australian governments, corporations and organisations, and this NT mining law reform is the perfect opportunity to do so.

Building FPIC requirements into NT mining laws, needs to be implemented by best practice, will empower Aboriginal people to have their say and be in control of their cultural heritage.

Recommendations:

- **Protection of sacred sites and Aboriginal cultural heritage should be considered at the forefront of any project and appropriate assessments and approvals should be completed and obtained as a pre-condition to the grant of a mineral title and a Mining Licence.**
 - **Embed Free, Prior and Informed Consent for Traditional Owners in the NT Environment Protection Legislation Amendment (Mining) Bill 2023 & Draft Legacy Mines Remediation Bill 2023.**
-

Building a Evidence Base: NT Monitoring of Natural and Cultural Assets

In order to map out a future for the sustainable development of the Northern Territory, a monitoring program of the extent and condition of various cultural and natural values (like native vegetation) is urgently required, so there is an evidence based record of biodiversity assets, and decision-making for the approval for mining licences can be made on an evidential basis. For a stocktake to be completed of our most valuable natural assets, an array of data sourced from satellite technology, surveys and ground-truthing studies from the field must be utilised.

There is an urgent need to carry out a new contemporary assessment to get an up to date understanding of the extent and health of the NT's large and intact ecosystems—some of which are among the most significant cultural landscapes left on Earth. Given the considerable advances in remote sensing and mapping technology, a new assessment of ecosystem intactness and integrity is overdue.

The final report of the independent review of the federal EPBC Act highlighted the significant shortfalls in environmental monitoring, evaluation and reporting. This report cited an alarming shortfall in the sophistication and capacity of these capabilities, "monitoring and reporting that is done lacks coordination and often focuses on bare minimum administrative reporting... a lack of long-term monitoring makes it difficult to establish a baseline against which to evaluate performance."

Recommendation:

- **Conduct a NT State of the Environment report which includes data on: cultural heritage, native vegetation and biodiversity assessments with the following specific requirements:**
 - ground-truthed nationally-consistent datasets on key environmental variables with a focus on disturbance/integrity, condition
 - Traditional Ecological Knowledge and First Nations cultural heritage sites
 - the identification of areas of superlative intactness (which might include a modern and updated National Wilderness Inventory,⁶ Land Disturbance Database⁷ and River Disturbance Index⁸)
 - spatial data to inform High Carbon Stock⁹ and High Conservation Value¹⁰ vegetation protection, management and restoration approaches and to complement the national deforestation and ecological restoration monitoring program (outlined above)
 - the identification of key areas for protection and restoration for carbon and biodiversity.
 - Reviews of the above information every decade, all made publicly available.

Strategic Plan: Transition Minerals and Renewables

Many NT mining projects are seeking to be fast-tracked under the frame of Transition Minerals or Critical Minerals, yet there is no strategic plan for evaluating these mining developments in a framework that also reviews the global significance of the cultural and environmental values of a region. The supply-chains from mining to renewable energy developments should be evaluated and strategically mapped, to minimise impacts on the globally significant values of the region, while value adding through co-benefits for communities to benefit from any developments with consent. There are international best practice principles, which the NT and Australia should adopt when reviewing these projects.

For example, developments should occur on previously developed or degraded lands and minimise impacts on ecosystems and water flows. Consultation and participation from relevant First Nations peoples, and Traditional Owners should be sought, early and often in order to secure consent, before any project is given the green light by government or corporate decision-makers. Plus, the support of local communities for transition minerals and renewable developments is vital.

A strategic critical minerals plan is required, to make sites of outstanding universal value which are naturally and culturally significant are not unnecessarily sacrificed for renewable energy goals.

⁶ Lesslie, Rob G., and Margaret Maslen. National wilderness inventory Australia. Australia Government Pub. Service, 1995.

⁷ Lesslie, Rob, Richard Thackway, and Jodie Smith. A national-level Vegetation Assets, States and Transitions (VAST) dataset for Australia (version 2.0). Canberra: Bureau of Rural Sciences, 2010.

⁸ Stein, Janet L., John A. Stein, and Henry A. Nix. "Spatial analysis of anthropogenic river disturbance at regional and continental scales: identifying the wild rivers of Australia." *Landscape and urban planning* 60.1 (2002): 1-25.

⁹ Lyons-White, Joss, et al. "Understanding zero deforestation and the High Carbon Stock Approach in a highly forested tropical country." *Land Use Policy* 112 (2022): 105770.

¹⁰ Areendran, G., et al. "A systematic review on high conservation value assessment (HCVs): Challenges and framework for future research on conservation strategy." *Science of the Total Environment* 709 (2020): 135425.

The Wilderness Society recommends that the NT government and the minerals & renewables sector industries commit to absolute best practice, including:

- All Transition Mining projects begin consultation with communities early and often, prior to seeking any government approval for mining licensing
- No project is advanced in the absence of current free, prior and informed consent (FPIC) from relevant Traditional Owners or First Nations peoples;
- Traditional ecological knowledge (TEK) is appropriately integrated in planning, assessment, implementation and management of any relevant natural and cultural heritage;
- The local community's social licence to operate is genuinely sought and obtained by proponents;
- Renewables Projects and infrastructures are sited on land and sea which has previously been developed or degraded, and greenfields sites are avoided; and
- Ensuring the least impact on natural surface and groundwater flows, for the cleaning and maintenance of large scale renewable energy assets.

Recommendation:

- **The NT Government should develop a strategic plan, based on best practice, to ensure the transition minerals sector and renewables sector does not impact upon World Heritage Areas and places of outstanding universal value, including cultural heritage, or critical habitat for threatened species facing extinction.**

The Wilderness appreciates the opportunity to feed into the mining Act. reforms, in regards to the *Environment Protection Legislation Amendment (Mining) Bill 2023* and *Draft Legacy Mines Remediation Bill 2023*, which reflect the opportunity for regulators and decision-makers to upgrade and adapt the current regulatory regime to ensure it is fit for purpose.

A significant shift is needed to turn the tide on the legacy of mining in the Territory to one where the community has greater trust in the system, can access information that decision-makers hold, public are participants in decision-making and there is access to justice, if decisions aren't made in the public interest.

For more information about this submission, please contact Jenita Enevoldsen
jenita.enevoldsen@wilderness.org.au