

Legacy Mines Remediation Bill

Feedback Summary Report



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Acronyms	Full form
DEPWS	Department of Environment, Parks, and Water Security
DITT	Department of Industry, Tourism and Trade
EP Act	<i>Environment Protection Act 2019</i>
LMU	Legacy Mines Unit
MMA	<i>Mining Management Act 2001</i>
MRF	Mining Remediation Fund
NT	Northern Territory

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1. Introduction

The current stage of the Northern Territory Government's environmental reform process involves repealing the existing *Mining Management Act 2001* (MMA), transferring environmental regulatory responsibilities for mining activities to the *Environment Protection Act 2019* (EP Act) and transferring the regulation of mining operations from the Department of Industry, Tourism and Trade (DITT) to the Department of Environment, Parks and Water Security (DEPWS).

With the repeal of the MMA, legislation is required to regulate the remediation of legacy mines and legacy mine features; provide for the ongoing requirement for a mining remediation levy to be paid by mining operators; and for the continuation of the Mining Remediation Fund (MRF). All of these activities will continue to be regulated and administered by DITT.

The draft Legacy Mines Remediation Bill 2023 (the draft Bill) and the Environment Protection Legislation Amendment Bill (EP Bill) were released for four weeks of public consultation in August and September 2023. This paper provides a broad summary of the verbal and written feedback received during the consultation period and also outlines our response to the issues raised. The feedback has been used to inform the finalisation of the draft Bill and will also be used to develop drafting instructions for the Legacy Mines Remediation Regulations.

All of the information received has been, and will continue to be, considered in the legislative process; however, due to its broad nature, not all comments are reflected in this summary overview. We thank all the groups, associations and individuals that took time to meet and prepare submissions. Submissions that we have been given permission to make public are available from [Consultation: Legacy Mines Remediation Draft Bill | Department of Industry, Tourism and Trade](#).

2. Issues raised

2.1. Timeframe and detail available for consultation

Public consultation commenced on 18 August and closed 18 September 2023. 15 submissions were received in relation to the LMR Bill. DEPWS and DITT held a total of 16 briefings with 14 stakeholder groups over the consultation period. Some stakeholders received multiple briefings, while other stakeholders held combined meetings.

There was general feedback from stakeholders that there was insufficient time to consider the legislation and provide meaningful comment. Environment groups suggested that consultation should be extended to enable Aboriginal Territorians to provide input and that all documents should be available in first Languages. Further, stakeholders considered there was a lack of detail as the Regulations were not available for public comment. Stakeholders suggested that the process should be delayed by several months so there could be additional consultation.

Response

The timing for introduction and passage of the Bills has been set in consideration of Government's broader legislative agenda. To meet NT Government timeframes for introducing the Bills in the October 2023 sittings, extensions to the consultation period were not possible.

The draft Bill provides the legislative framework to establish the processes identified in the Bill, such as the declaration process for a reserved legacy mine site. The detail will be included in legislative instruments falling under the legislative framework. Hence, it would be highly unusual to consult on such legislative instruments in advance of the Legislative Assembly considering the overarching legislative framework.

2.2. Stakeholder engagement, transparency and reporting

The draft Bill will introduce a number of mechanisms where transparency and public participation will be expanded. This includes a notification process before declaring a reserved legacy mine site and more appropriate definitions of legacy mine sites and legacy mine features which are a significant improvement from the 'unsecured mining activities' definition under the MMA.

There was general support from stakeholders about increasing transparency and public participation. In general agreement was the additional requirements for annual public reporting. All stakeholder groups expressed a desire for frequent disclosures about the MRF, including its inflows and outflows, along with the use of funds and associated outcomes. Specific expenditure reporting on research was also called for. There was also general consensus that there should be a register with all legacy mines sites and features and that the registers should be made spatially and publicly available, with one suggesting that it should be on [STRIKE](#) or [NR Maps](#).

Environmental and Aboriginal stakeholder groups recommended that additional engagement with landowners and Traditional Owners was required to enable remediation works to be developed, co-designed and delivered with Traditional Owners. It was further suggested that it should be a requirement to develop agreements with Aboriginal landowners and to have agreed works/remediation, clearance to access the land and carry out an agreed rehabilitation plan. Free, prior and informed consent should be obtained for entry to land and the carrying out of remediation works on Country and that the notification process for land access should be expanded to include all relevant persons; and require the notice to include details about the proposed remediation.

Industry stakeholders called for early engagement with mining operators who have legacy features in or near their mining sites when remediation activities are planned to occur.

Industry feedback supported the establishment of the Legacy Mines Advisory Panel (the Panel) but considered the Panel should've been included in the draft Bill. Regular Panel meetings aided transparency and accountability. Industry also suggested that the draft Bill should be reviewed within ten years to review if the MRF is achieving what is defined in the purpose. To ensure the probity and integrity of the MRF it should be audited every five years.

Response

The NT Government has committed to increasing transparency and improving accountability as part of the reforms. Increasing transparency and allowing for appropriate public participation will create greater accountability and build confidence.

Stakeholder feedback has been considered and additional requirements have been included in the legislation to address these issues. A requirement has been included in the legislation that requires the Chief Executive Officer to prepare an annual statement on the operation of the MRF, including specific purposes for which money has been paid out and activities carried out using the MRF. The report will be published on the Departments website no later than 31 October each year.

Acknowledging the feedback that highlighted the importance of consultation through the remediation planning and implementation phases, changes have also been made to the legislation to identify consultation as part of the definition 'remediation activity' so that its importance is recognised and catered for. Further, the functions of a legacy mines officer has been expanded to include consultation with owners and occupiers of land impacted by legacy mines. However, it is important for the Government to maintain a degree of flexibility in program delivery and responsiveness and more prescriptive consultation provisions have not been adopted.

The 2021-25 Strategic Plan committed to the establishment of a Legacy Mines Advisory Panel. This Panel was established in 2022 and is a valuable forum for industry views and suggestions to be presented for NT Government consideration.

2.3. Mining Remediation Levy and Fund

A financial security is a payment required from current mining operators under the MMA, calculated on the level of likely disturbance from the mining activities and is refunded when mining has ceased and the site has been rehabilitated. The requirement to pay a security is being retained under the EP Act. Mining operators are also required to pay an annual non-refundable mining remediation levy calculated as 1% on their financial security. The levy is largely unchanged in the new Bill as it will continue to support the MRF and contribute to the effective administration of the Legacy Mines Remediation Bill.

The MRF is an account held in trust that can only be used for specific purposes detailed in legislation and there is strong governance regarding expenditure from the trust account. The new Bill addresses restrictions in the MMA by explicitly listing allowable costs and expenses related to remediation and ensuring that the MRF can be used for the full breadth of remediation activities.

Feedback through the consultation was generally supportive of the MRF expansion for allowable costs and expenditure in the new Bill. Industry wanted to see more detail, supporting expenditure in areas such as mine water characterisation but not necessarily supportive of the Fund being used for staff training or academic collaborations such as Cooperative Research Centres. Industry also questioned the clause allowing the MRF to be used for incentives, considering that this may be at odds with government policies such as procurement. Industry wanted to see balance with the two intents of the Fund, ensuring the prioritisation of remediation activities over research. Any outcomes from research funded by the MRF should be made publicly available. Other industry feedback suggested that the percentage of money spent on research should be reported on. They further suggest that the maximum amount spent on research should be capped at 25%.

Others suggested that local skills and capabilities, through direct employment or contracting, could be accelerated through the use of the MRF's funds. Another contributor suggested that forward planning, training and skills development in land remediation should be developed through TAFE and university institutions to enable local workers to gain the skills needed. Viewing legacy sites as potential sites for geotourism, another stakeholder suggested that the word "tourism" be included in the draft Bill as a potential benefit for the community.

Response

Expanding the ability of the Department to utilise the MRF for the full spectrum of remediation activities was deemed an important part of these reforms. Adding additional detail to the draft Bill is not possible as remediation activities are very much dependent on a case-by-case basis. Expanding the MRF on research activities is an important part of the process to ensure we build on our successes and identify technologies with the potential to provide benefits for addressing legacy mines and improving remediation outcomes. Expanding the reporting and accountability in the legislation will enable stakeholders to be informed about expenditure and outcomes.

The primary objective of the MRF is to reduce potential liabilities and reduce environmental and public safety risks associated with legacy mines and legacy mine features. Leveraging the MRF for additional tourism opportunities, training and skills development is not the primary focus, however, may be a secondary benefit from undertaking remediation activities. These areas are supported by the Government however, legislation is not the most appropriate tool for such an outcome.

Any expenditure and use of the Fund will, by necessity, comply with all the requirements of the *Financial Management Act 1995*, the *Procurement Act 1995* and any relevant Treasurer's Directions.

Expenditure from the MRF is governed by NT Government procurement rules, which are heavily weighted toward local content. Local content will continue to be a key focus during procurement, however, consideration will be given to ensuring the relevant technical expertise is engaged.

2.4. Statutory approvals and licencing

When managing legacy mine sites, the NT Government is actively rehabilitating pre-existing environmental impacts, rather than causing new environmental harm for commercial gain. Remediation authorised under the draft Bill is therefore exempt from requiring an environmental (mining) licence under the EP Act.

The draft Bill also contains a clause enabling the Minister to prescribe by regulation certain statutory approvals that authorised persons would be exempt from requiring when undertaking authorised remediation activities. This capacity would only be used following consultation with the statutory decision maker and would reduce excessive regulatory requirements being transferred onto individual contractors and other participatory groups, like land and sea rangers, university research investigations and community groups, assisting in the remediation program.

Industry stakeholders considered that the remediation activities authorised under the new legislation should be made explicitly exempt from the Environmental Impact Assessment and other assessment processes performed under the *Environment Protection Act 2019*. This was to maximise the reduction in liability, environmental and safety risks associated with legacy features across the Territory.

Conversely, environment groups and land councils considered that remediation activities should be subject to all statutory approvals, including environmental (mining) licences and that permits under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA)* must be obtained before entering Aboriginal land. They also suggested that the clause allowing the Mining Minister to authorise activities without obtaining a statutory approval should be removed.

Environmental groups also suggested that a Fit and Proper Person Test should be applied for authorised persons undertaking remediation activities and that the legislation should include review rights to ensure authorisations can be reviewed by directly affected people such as landowners and Traditional Owners

Response

Remediation activities currently undertaken by DITT under the *Mining Management Act 2001* do not require an 'authorisation' as it is not considered a 'mining activity'. Nevertheless, components of a remediation activity may need to be 'approved' under various other Acts such as; the *Waste Management and Pollution Control Act 1998*, the *Planning Act 1999* and the *Water Act 1992*. If a significant impact on the environment were to be proposed, the requirements for an environmental impact assessment under the EP Act may still apply.

When the Minister authorises a person to carry out remediation activities, they will not be required to hold an environmental (mining) licence under the EP Act. This is provided for in both the EP Bill and the LMR Bill. The draft Bill acknowledges that remediating a legacy mine is a different process and not part of a profit based commercial mining activity.

Legacy mine sites across the Territory are assessed and prioritised to reduce environmental harm and minimise safety risks for the community. Government is actively rehabilitating pre-existing environmental impacts because there is no other responsible party and the liability cannot be surrendered.

There is an additional power in the LMR Bill that will allow the Minister to exempt an authorised person from other statutory approvals, however, before this can occur the specific legislation must first be prescribed in the Legacy Mines Remediation regulations. Additional governance is built into these provisions requiring the Minister to first consult with the prescribed statutory decision-maker and consider

their feedback, prior to authorising a person to be exempt from the statutory approval requirement. This allows for an appropriate risk based regulatory framework that is accountable and transparent, whilst still retaining flexibility to undertake legacy projects where required.

Remediation activities are also contracted through the Government's procurement process and appropriate governance is built into the contractual arrangements thereby reducing the need for fit and proper person tests.

2.5. Departmental responsibility for legacy mines

The Legacy Mines Unit (LMU) is a dedicated team within DITT that undertakes remediation of legacy mine features across the Territory to address environmental and safety risks. Using a specialised combination of skills, the team undertakes risk assessments of legacy sites, prioritises key sites and manages investigations and remediation actions. The LMU also scopes necessary works, procures technical, specialist and engineering expertise in accordance with Government requirements, and project manages site works.

Land councils recommended that DEPWS should be responsible for environmental management and rehabilitation of legacy mines and that the definition of legacy mine should be restricted such that it only applies to smaller, low risk sites. Larger sites (Ranger, Sandy Flat, Rum Jungle) should not be captured by legacy mines bill as they should be managed by DEPWS.

Another submission was concerned that legacy mine remediation will become less scrutinised with the new legislation. They indicated that remediation activities can be technically designed to highly engineered standards but lowest cost / lowest standard options are chosen.

Response

The LMU, within DITT, have built a significant amount of expertise and knowledge in undertaking remediation activities. In addition, there is significant mine remediation expertise within the Rum Jungle project team which undertakes similar activities to the LMU. There are significant benefits from knowledge sharing and development between the two teams.

Legacy mines projects are prioritised after a rigorous assessment of the risks and impacts both from a safety and environmental perspective. Significant planning and investigations are undertaken to obtain baseline data that informs the modelling used to ensure any remediation activities undertaken will mitigate the risks and impacts. The LMU utilises multiple contractual arrangements to undertake the required works across different areas of expertise requiring a dedicated work unit outside of the assessment and regulation of current mining operations.

2.6. Reserved legacy mines sites

The new legislation will allow the Mining Minister to declare a reserved legacy mine site which will provide greater management certainty and security when investing MRF monies, and engaging in commercial remediation contracts. The declaration notification process provides an opportunity to consider any competing or conflicting interests before committing to significant MRF investment and will have the effect of preventing new mineral interests being granted while the declaration instrument remains in force.

Submission from industry was mixed with one stakeholder welcoming the provision as it ensured that remediation can proceed without subsequent interference with new mining activities. Others suggested that the reserved status should be flexible to prevent a lock-up of this land, particularly at a time when investment in energy transition is underway and novel uses for legacy mine sites could become commercially feasible. Other submissions suggested that the declaration should only be made when there are no economic implications for miners or explorers who are actively developing a project. There was concern that the provision does not provide certainty to developing projects who may have a pending

application for a mineral lease, or an exploration licence holder who are in the early stages of the feasibility process.

Response

The department is proposing to address these concerns by including consultation processes to be followed in the regulations such that a notice period will precede the declaration of the site. The notice will enable affected parties to write to the Minister and provide their input on the declaration decision-making process. Any competing or conflicting interests will be considered and weighed up, prior to declaring the reservation and before committing to significant MRF investment. The reserved status will be implemented by Gazette and can be revoked in the event circumstances change.