



**Arid  
Lands  
Environment  
Centre**

**Office:** 90 Gap Road Alice Springs NT  
**Mail:** PO Box 2796 Alice Springs 0870 NT  
**Web:** [www.alec.org.au](http://www.alec.org.au)  
**Phone:** 08 89522497  
**Email:** [policy@alec.org.au](mailto:policy@alec.org.au)

## **The Environment Protection Legislation Amendment Bill and the Legacy Mines Remediation Bill**

1. The Arid Lands Environment Centre (ALEC) is Central Australia's peak community environmental organisation that has been advocating for the protection of nature and growing sustainable communities in the arid lands since 1980.
2. ALEC actively contributes to the development of mining law and policy reform through engagement with *Regulation of mining activities: environmental regulatory reform (2020)*, *Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022*, and *Mineral Royalty Scheme Review Consultation Paper (2023)*. ALEC also engages extensively with mining developments across the arid and semi-arid lands.
3. ALEC welcomes the opportunity to provide comment on the:
  - a. *Environment Protection Legislation Amendment (mining) Bill (EP Mining Bill)*, and;
  - b. *Legacy Mines Remediation Bill (Legacy Mines Bill)*
4. ALEC would like to commend the Northern Territory Government for progressing these major reforms of the Territory's mining laws. The existing regulatory regime for mining is outdated and unfit for purpose. These laws have the potential to improve outcomes for the environment. Nonetheless, it is critical that these reforms are done right.
5. It is important to note the significance of these once in a generation reforms! These mining reforms will result in the *Mining Management Act 2001 (MM Act)* to be entirely repealed, where many of the responsibilities will be moved under the *Environment Protection Act 2019 (EP Act)*. These reforms will result in the establishment of a new system, requiring all operators to hold an environmental (mining) licence (**Mining Licence**). These are significant changes.
6. ALEC's submission addresses areas of strong support, areas of support that require improvements and shortcomings of the mining reforms.

### **Background**

7. There are currently 8 major mines operating in the Northern Territory, two of which are based in the arid and semi-arid lands:

**Newmont – Tanami (gold mine, Tanami region)**

**Elmore - Peko Tailings (magnetite from tailings, near Tennant Creek)**

Gulkula Mining – Dhupuma Plateau (bauxite mine, East Arnhem)

Core Lithium – Finnis (lithium mine, Finnis Region)

Australian Ilmenite - Sill 80 (ilmenite mine, Roper River Region)

Rio Tinto – Gove (bauxite mine, Nhulunbuy)

South 32 - Gemco (manganese mine, Groote Eylandt)

Glencore – McArthur River (zinc, lead and silver mine, near Borroloola)

**[emphasis added for mines in the arid and semi-arid lands]**

8. There are 1073 granting mining exploration licences covering 22% of the Territory.<sup>1</sup>
9. There are 720 mineral leases covering 0.12% of the Territory, including the 8 major mines operating above.<sup>2</sup>
10. There are extensive legacy mines scattered across the Northern Territory. These are often historical sites that have been abandoned and no security bond exists to rehabilitate the site, but also include recent mines such as the Ranger Uranium Mine in Kakadu which is undergoing rehabilitation, which may cost up to \$2.2 billion. Other legacy mines include, but are by no means limited to Rum Jungle uranium mine site and Red Bank.

## **Areas of strong support**

### **Regulatory Separation**

11. Moving the regulatory responsibilities from the Department of Industry Tourism and Trade (DITT) and the Minister for Mining to the Minister for Environment and Department of Environment, Parks and Water Security (DEPWS) is a major win.
12. The Department and Minister that advocates for the expansion of an industry (in this case, DITT and the Minister for Mining), should not be the responsible for regulating that industry. This change overcomes a major conflict of interest.
13. ALEC strongly welcomes these changes
14. ALEC notes that some responsibility is still left with the Minister for Mining and DITT, including:
  - a. Minister for Mining retains powers to grant mineral leases to operate under the Mineral Titles Act
  - b. Minister for Mining has the power to issue an authority to commence or continue

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<sup>1</sup> Mineral Development Taskforce Final Report, p.25-26.

<sup>2</sup> Ibid

activities once a Mining Licence is granted and security paid.

- c. The Mining Minister and DITT retain responsibilities for legacy mines under the Legacy Mines Bill

### **Improved transparency around mining operations and environmental conditions operators must comply with**

- 15. The current regime fails to ensure key information is publicly available.
  - a. Mining Management Plans (MMPs) and Authorisations are not publicly advertised.
  - b. These documents are not publicly available once an Authorisation or MMP is approved.
  - c. There is also no requirement for security bonds and how they are calculated to be published.
- 16. This makes it very difficult for the public to scrutinise mining operations.
- 17. The EP Mining Bill ensures that the Mining Licences, security bond amounts and plans submitted by operators under the legislation and licence conditions are published and publicly available.
- 18. Whilst supportive of this change, will expand below on how these matters to improve transparency do not go far enough (see section X).

### **Increased recognition of post-closure monitoring, management and reporting requirements**

- 19. Mine closure and rehabilitation represents one of the most significant environmental challenges faced by mine operators, and can include long-term impacts.
- 20. The EP Mining Bill recognises the long-term post-closure, monitoring, management and reporting requirements may exist at a mine site and stipulates that conditions can be included.
- 21. It is also recognised that mining security bonds may be required to be retained beyond the term of a Mining licence to meet these post-closure requirements.
- 22. Nonetheless, ALEC holds considerable concern regarding the failure to impose mandatory minimum standards for closure and post-closure planning for mine sites.

## **Areas of support alongside further improvements**

### **Public comment on Mining Licences, but not for all cases**

- 23. The current regime allows no public comment on any mining authorisation and approval of an MMP

24. There are existing improvements in the EP Mining Bill, where licences for modified or tailored conditions that do not require environmental approvals under the EP Act and a proposed decision to amend conditions where the Minister considers it to be a major alteration, will be publicly available for comment
25. However, licences under a standard condition and licences that require an environmental approval, there will be no opportunity for public comment.
26. ALEC believes that members of the public should be able to comment on all licence applications. This includes:
  - a. licences that fall under standard conditions, and;
  - b. tailored and modified licences that require environmental approvals. There are some public consultations for EIA purposes, there is no provision to ‘allowing the public to comment on the Environment Minister’s proposed decisions to grants (or refuse) an Environmental Approval at the end of the process’.<sup>3</sup>
27. ALEC holds concerns at no public consultation for licences that require standard conditions, as the standard conditions and risk criteria will undergo public consultation.

**Inclusion of some merits review, but this does not apply to the mining activities with the most significant environmental impact**

28. The EP Mining Bill establishes opportunities for merits review of certain Mining Licence decisions in the Northern Territory Civil and Administrative Tribunal (NTCAT).
29. However, there are very narrow conditions for which merits review can apply, and it excludes the mining activities with the most significant environmental impact. Mining licences that require environmental approvals are not granted merits review rights.
30. It is imperative that the projects with the most significant environmental impact are the activities which merits review rights apply.
31. The EP Mining Bill must include merits review rights for projects that also require an environmental approval, or changes must occur to the EP Act that all projects seeking environmental approvals are afforded merits review rights.

**Express requirements for mines in care and maintenance, but no limitations for the period of time operator can spend in care and maintenance**

32. ALEC welcomes licences conditions relation to mines in care and maintenance, however it is critical that specific time frame must be included.
33. The casual entrance in and out of care and maintenance presents major environmental risks for the Territory. This risk occurs in the context of a mining landscape in which the cost of legacy mines for too long has been left to affected communities and the Northern Territory

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<sup>3</sup> EDO Briefing Note on Mining Reforms, p. 12.

Government.

### **Strengthening compliance and enforcement powers**

- 34. ALEC is supportive of DEPWS assuming compliance and function powers in relation to mining activities
- 35. ALEC holds concern that civil and criminal proceedings will not apply to operators that fail to comply with amended standard conditions if a performance management program is in place.

### **Major shortcomings that must be strengthened**

#### **No mandatory requirements for mine closure plans and ongoing closure planning**

- 36. It is disappointing that the EP Mining Bill does not contain any mandatory requirements that mining operators have life-of-mine closure plans for their mining operations at the inception of the operation and that these are regularly updated and improved across all stages of a mine's life.
- 37. Instead it is simply a condition that may be imposed. This follows a trend where the EP Mining Bill does not contain any mandatory conditions for mining operators.
- 38. Long-term closure planning and an associated up-front security bond that covers all rehabilitation costs associated with the mining activity is best practice. It improves outcomes for the environment and affected communities, and ensures that the Northern Territory Government does not bare the costs of unaccounted rehabilitation costs.

#### **Security bond calculations are not meaningfully clarified and strong**

- 39. The EP Mining Bill does not include any mandatory factors for calculating a security bond.
- 40. This is despite a requirement that the Environment Minister has to calculate the value of the security
- 41. The EP Mining Bill will publish the security amount, it is currently not required that the methodology for developing securities is published. This makes it very difficult for security bonds to be scrutinised.
- 42. Further the EP Mining Bill does not allow for the review of security bands by landowners and communities most affected by a mining operation.
- 43. The approach to security bonds must be revisited, as review rights should be strengthened.

### **Too much discretion given to Minister for the Environment to determine licence conditions and any standards or minimum conditions**

44. ‘The draft EP Mining Bill gives the Environment Minister complete discretion to approve what standard conditions should be imposed on all mining operators holding environmental (mining) licences - whether universally or for different kinds of mining activities. There are no suggested or minimum standard licence conditions set out in the draft EP Bill.’<sup>4</sup>

45. This is a major area of uncertainty for the rigour of the proposed reform

### **Application of standard conditions ignores place-specific contexts of all mining operations**

46. ALEC query whether a mining activity should ever only have standard conditions apply. Place-based conditions that address specific environmental harms of that particular mine site and operation occurs for all mining operations. From a sand mine in Roe Creek to the Tanami Gold mine, all mining operations have environmentally unique conditions.

### **Lack of acknowledgement and express involvement of Aboriginal Territorians in planning, setting objectives and review through life of the mine**

47. The vast majority of mining operations in the Northern Territory occur on Aboriginal land or land that is subject to native-title.

48. As the EDO state:

‘There is a need for genuine consultation and co-design with Aboriginal Territorians to be embedded in the Bills. Traditional owners should be involved in setting closure objectives, reviewing mining operations and mine site rehabilitation and in setting and reviewing the conditions of Mining Licences. They are the most affected by toxic mine sites on Country and historically have been disempowered from these processes. EDO supports standards and requirements in national and state and territory laws that are co-designed by First Nations peoples and incorporate rights under the UN Declaration on the Rights of Indigenous Peoples, in particular, the requirement for free, prior, and informed consent.’

‘The Bills also provide that not all Mining Licences are subject to merits review. Where it is available, standing is limited to those who are “directly affected” or who make a genuine and valid submission in the process. This is not acceptable in terms of the need to make submissions to then access review rights. There is a need for Aboriginal landowners to have standing for merits review of all decisions made under these reforms.’

ALEC supports these positions.

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<sup>4</sup> EDO Briefing Note on Mining Reforms, p. 18.

### **Failure to strengthen sacred site and Aboriginal cultural heritage assessments as a pre-condition**

49. Aboriginal cultural Heritage and sacred site protection should be considered at the forefront of any project and the subsequent assessment processes. It should be a pre-condition to obtain a mineral title and a Mining Licence.
50. The learnings of the Juukan Gorge Inquiry should be embedded in these mining reforms.

### **Remediation activities without obtaining statutory approval**

51. ALEC is alarmed that s.19 of the Legacy Mines Bill provides that the Minister may authorise a person to carry out a remediation activity with the Bill without obtaining a statutory approval of a kind prescribed by regulation that would ordinarily be required to carry out the activity.

### **Not fit or proper person test required for mine site rehabilitation**

52. There is no requirement or criteria which the Minister needed to adhere to choosing which person to authorise to carry out remediation activities, such as a fit and proper person test

## **Other comments**

### **Regulators must be resourced**

53. To administer the new provisions under the EP Mining Bill, it is vital that DEPWS is fully resourced to be able to properly administer and enforce the law.

### **Consultation**

54. The short consultation periods are concerning for what is major reform. It makes it extremely difficult for affected communities and the wider public to engage with this process.

Kind regards,



Alex Vaughan

Policy Officer



Adrian Tomlinson

Chief Executive Officer