Mineral Titles Act and Regulations

Consultation Summary Report

NORTHERN TERRITORY GOVERNMENT

Acronyms	Full form
ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*
EL	(Mineral) Exploration Licence
ELR	(Mineral) Exploration Licence in Retention
EMEL	Extractive Mineral Exploration Licence
EML	Extractive Mineral Lease
EMP	Extractive Mineral Permit
EPA	*Environment Protection Act 2019*
ML	Mineral Lease
MLSSM	Mineral Lease for Small Scale Mines
MLTF	Mineral Lease for Tourist Fossicking
NCEI	Non-Compliant Existing Interest
NTA	*Native Title Act 1993 (Cth)*
NTCAT	Northern Territory Civil and Administrative Tribunal

Contents

Acknowledgement of country

The Northern Territory Government respectfully acknowledges the First Nations people. We pay our respects to Elders past, present and emerging and extend that respect to Aboriginal and Torres Strait Islander people here today.

We recognise the enduring relationship of First Nations people to their Country as well as honour their ongoing cultures and connections to the lands, waters and communities of the Northern Territory.

The Northern Territory Government recognises the valuable contributions made by First Nations people and communities and how this continues to enrich our society in the Northern Territory.

1. Introduction

The report outlines the key issues, themes and feedback received during public consultation of the Mineral Titles Act and Regulations Discussion Paper. It provides a broad summary of the submissions received and the government's response to the issues raised, including those areas where further consideration is required.

The responses gathered will play an important role in the development of legislation to amend the *Mineral Titles Act 2010* (the Act) and the Mineral Titles Regulations 2011 (the Regulations), ensuring the Act and Regulations continue to meet the expectations of industry, government and the community.

The Department of Mining and Energy (the Department) would like to thank all participants who contributed their time to the consultation process. We heard from a diverse range of stakeholders including peak industry bodies, industry representatives, government agencies, environmental groups, fossickers and community members. All of the feedback collated will continue to be considered in the legislative reform process.

1.1. Why are we reviewing the Mineral Titles Act

The Act has not been significantly amended in its 14 years of operation and it is now timely to conduct a review of the Act to ensure the mineral titles legislative framework remains current, adaptive and responsive to the evolving needs of industry and the community.

The Act and Regulations commenced on 7 November 2011, replacing the former *Mining Act 1980*. The Act regulates the tenure of mineral titles in the Northern Territory and provides the necessary authority to conduct exploration, extraction and processing of minerals and extractive minerals. It also contains provisions to identify and manage preliminary exploration and fossicking activities that do not require a mineral title.

A number of opportunities to enhance the administration of mining tenure have already been identified by government and industry, which will support the NT Government's commitment to rebuild the economy, by cutting red tape and removing unnecessary administrative burdens for both industry and the Territory to attract mining industry investment and development.

A review of the Act and its proposed amendments will ensure the Act continues to deliver a regulatory framework that enables growth, market access and stakeholder certainty into the future.

1.2. What the new Act will cover

The new Act and subordinate legislation will:

- improve administrative and procedural processes for mineral title management
- ensure the most effective use of the Territory's mineral resources for Territorians by strengthening the application and grant requirements for mining leases
- strengthen information that must be provided in relation to proposed activities on an exploration licence and mineral lease through the technical work program requirements
- implement new initiatives to encourage meaningful activity and progress towards the development of resources
- provide flexibility and increased opportunities for the extractive mineral industry

- implement new measures to clarify the standing of non-compliant existing interests
- support and grow our fossicking tourism sector.

2. Consultation process

On 18 June 2024, the Northern Territory Government published the Mineral Titles Act and Regulations Discussion Paper on the Have Your Say NT website. The discussion paper provided an overview of the proposed reforms to the Act and Regulations, describing the current issues and rationale for the changes. Fact sheets containing key information on the proposed changes were also developed.

Invitations to comment on the discussion paper were sent to peak industry bodies, industry representatives, land councils, environmental groups, fossickers and community members. The discussion paper was also advertised on LinkedIn, Facebook, NT News and various business bulletins.

Public consultation closed on 13 August 2024. A total of 26 submissions were received during the two month consultation period.

In addition, several briefings were held with stakeholder groups where requested. Stakeholder groups were briefed on the key themes of the discussion paper and were provided an opportunity to ask questions.

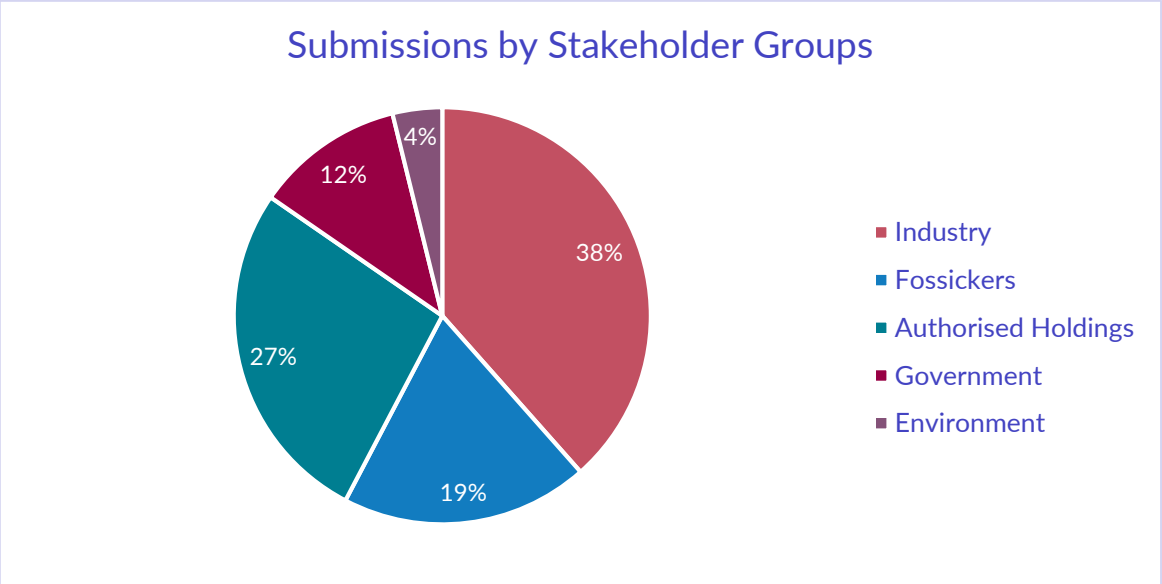
3. Overview of responses

Over the course of the two month consultation period there were 720 page views and 190 informed visitors[1] to the consultation webpage on Have Your Say NT. A total of 26 submissions were received from a wide range of stakeholders including peak industry bodies, industry representatives, government agencies, environmental groups, fossickers and community members.

Figure 1 presents a categorised breakdown of the various stakeholder groups who provided submissions.

[1] An informed visitor has taken specific action on the webpage (i.e. downloaded a document).

Figure 1: Submissions by Stakeholder Groups



4. Next steps

All feedback received will continue to be considered in the development of legislation to amend the Act and Regulations. Where further consultation is required, the Department will continue to engage with stakeholders on those reforms prior to the Bill being introduced to the Legislative Assembly.

5. Summary of consultation submissions and government response

This section summarises the key themes raised during the consultation process and the government's response to the issues raised. Due to the number of submissions received and the breadth of proposed changes, not all comments are reflected in this summary report.

A full list of written submissions can be viewed at the Department of Mining and Energy website.

5.1. Administrative changes

6.1.6. Extractive mineral

The extractive minerals industry plays a key role in the development of critical infrastructure in the NT. Under the Act, an extractive mineral is defined as soil, sand, gravel, rock or peat.

The discussion paper proposed that the definition of an extractive mineral be amended to closely follow the term 'mine' under the *Native Title Act 1993 (Cth)* (the NTA).

One industry representative suggested to include clay as a distinct type of extractive mineral in line with the definition of extractive resources or basic raw materials in other jurisdictions.

Government response

The department supports the inclusion of clay (with the exception of fine clay such as kaolinite and bentonite) to the definition of an extractive mineral. The proposed definition is consistent with other jurisdictions, including WA, VIC and SA.

6.2. Public notice of application for grant of mineral title (s.71)

Currently, the Act requires a mineral title application to be published in a newspaper stating that an application for the grant of a mineral title has been made. To enable other ways in which a notice may be published, the discussion paper proposed allowing the Minister to determine how a mineral title application notice may be published (e.g. on a NT Government website), which will provide the community with greater access to information. It was also proposed that applicants would pay advertising costs or a small administrative fee for the publication of notices required under the Act.

Industry representatives generally supported the proposed changes, but queried whether fees would be imposed for advertising on the NT Government website.

Environmental representatives emphasised the need for a consistent, minimum publication standard for mineral title applications to be incorporated into the Act. For example, on an accessible and searchable government website, accompanied by the option for the Minister to impose additional publication requirements dependent on the circumstances. This may include mineral title applications to be

accompanied by notices in First Nations languages, or for notices to be published in a central location relevant to a nearby community.

Government response

Under the proposed reforms, no fees would be imposed for the advertising of mineral title application notices on the NT Government website. Mineral leases (MLs) and extractive mineral leases (EMLs) will continue to be published via newspaper and also on the proposed NT Government website. The same costs that currently apply will continue.

The requirement for mineral title application notices to be translated into First Nations languages is acknowledged and recognised.

For Aboriginal land, all applications for the proposed grant of a mineral title are subject to the Aboriginal Land Rights Act (NT) 1976 (Cth) (ALRA) and as such traditional owners, through the relevant Land Council have the right to either consent to the grant of all or part of an application area, or to place an application area into a five year moratorium.

A mineral exploration licence (EL) cannot be granted by the department until the ALRA process is completed and an agreement reached between the parties. The ALRA does not impose any notification requirements on the NT Government.

For native title land, the NT Government already meets its notification obligations under the NTA by providing notice to registered native title parties and/or claimants through the relevant NT land council when a mineral title application is made[2]*.*

The advertising of notices via other channels, such as the proposed NT Government website, would ensure broader accessibility and transparency and provide additional opportunities for the community to receive timely and relevant information about the proposed grant of NT mineral title applications.

6.3. Survey of particular title areas (s.76)

Prior to granting particular mineral titles, an applicant is required to survey the proposed mineral title area and provide a copy of the survey plan to the department. To ensure that surveys are undertaken in a timely manner, the discussion paper proposed providing the Minister with authority to request a survey and for that survey to be completed within six months. Section 167 would allow for an extension if satisfied there are circumstances to justify the delay in surveying the proposed title area.

Industry representatives did not support the proposed six month timeframe to complete the survey, citing challenges in obtaining a licensed surveyor. Industry representatives also raised concerns over potential penalties for not completing the survey within the six month timeframe.

Government response

The department acknowledges the challenges in obtaining a licensed surveyor and the requirement to complete a survey within six months when requested. However, it should be noted that Section 76(3) and Section 167 of the Act already provides the Minister with flexibility and discretion to:

- *grant a mineral title before the proposed area is surveyed and*
- *provide an extension if satisfied there are valid reasons for the delay.*

[2] *Native Title Act 1993 (Cth)*, s 29

The department has considered the feedback received and will propose to extend the timeframe to complete a survey from six to nine months. In addition to the Minister's discretion, the extended timeframe will take into account the Territory's wet season, particularly when road access to remote areas may be restricted.

It is not proposed to impose penalties for not completing a survey within the specified or extended timeframe, however failure to do so will result in a delayed grant of the mineral title.

6.11. Constructive consent of landowner (s.168)

Section 168 provides that a landowner is taken to have given consent if the person who has served the landowner a notice (requesting consent to take a specific action, such as to enter the landowner's land) does not respond in writing within two months after the notice was served. However, this section is not appropriate for Aboriginal land where permission to enter land must be requested under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (the ALRA).

To clarify this section, the discussion paper proposed to include a note that the section does not apply to Aboriginal land for the purposes of Section 21(1)(c) or Section 138(1)(b) of the Act.

Industry representatives expressed concerns about the two month notification period to enter land, stating that it was a longer timeframe than required. They also outlined the challenges in obtaining current landowner addresses for serving notices, which were not always readily available.

Government response

The provisions at Section 168 relate mainly to preliminary exploration and fossicking. Under the proposed reforms, this provision will be clarified to state constructive consent does not apply to Aboriginal land. A person wishing to enter Aboriginal Land must comply with requirements under the ALRA.

Given the limited application of this section, the current two month notification period is considered reasonable and appropriate for requesting constructive consent from landowners/occupiers. The current notification period allows landowners/occupiers to review the request and respond appropriately, ensuring a collaborative and respectful process.

The most appropriate approach to obtain current landowner/occupier details for serving notices will be further considered.

5.2. Exploration activities

7.2. Application for and grant of exploration licence (s.27)

The discussion paper identified that the Act currently does not specify the minimum and maximum number of blocks that can be applied for when submitting an EL application. This has resulted in applicants applying for a greater number of blocks (i.e. over the maximum of 250 blocks) that can be granted under Section 28(1)[3]. To provide greater clarity and reduce administrative burden, the discussion paper proposed specifying the minimum and maximum number of blocks that can be applied for under Section 27(2), so that a person can apply for a minimum of one block and a maximum of 250 blocks.

Industry representatives did not support the maximum number of blocks that could be granted for an EL application. They recommended that the maximum number of blocks be increased to 500 blocks to reduce

[3] Section 28(1) of the *Mineral Titles Act 2010* provides that a grant of an EL title area may comprise of a minimum of 4 adjoining blocks and a maximum of 250 blocks.

administrative burden with amalgamation and non-group reporting processes. One industry stakeholder stated that the application of single blocks appears to contrast with the Act's intent to reduce administrative burden.

Government response

The NT Government is committed to securing new investment by introducing incentives to encourage activity on ELs and minimise opportunities for land banking. The intent of this section was not to increase the maximum number of blocks that could be granted under an EL, but rather to provide clarity on the EL application requirements pursuant to Section 28(1).

The capacity to grant a maximum of 250 blocks will be maintained in order to minimise the potential for land banking and to promote equitable land distribution for exploration in the NT.

Concerns raised that the application of single blocks will increase administrative burden are noted. Currently, the Act is silent on the ability to apply for single blocks, meaning that if an area is reduced by one block, another applicant will not be able to apply for that block for mineral exploration. The proposed reforms intend to resolve this matter by allowing for the application of single blocks.

7.3. Reduction of the area of exploration licence (s.29)

To provide for ELs that may take considerable time to secure, such as those on Aboriginal land, the discussion paper proposed that the reduction requirements of an EL title area should apply at the end of the initial grant period (typically granted for six years). This replaces the requirement for an EL title area to be reduced at the end of each two year period.

If a renewal is sought, the title holder would still be required to nominate blocks for reduction at the end of the initial grant period, pursuant to Section 29(3), and the Minister would retain the capacity under Section 29(4), to waive, in part or fully, the reduction requirement before granting the first renewal.

The discussion paper proposed that following the end of the first renewal period, the reduction of the EL title area would be made compulsory, with no capacity for the Minister to waive the reduction requirement from the second renewal period and any subsequent renewals.

Industry representatives were generally supportive of the proposed EL reduction requirements, pointing to challenges with land banking and operating in the Territory.

Industry representatives suggested that the Minister's capacity to waive the reduction requirement should be extended beyond the first renewal period and remain available in each subsequent renewal period. They argued that extenuating circumstances including natural disasters, pandemics, complex work programs and serious land access issues should be taken into account as they offer legitimate circumstances for waiving a reduction requirement.

One industry representative emphasised the need to include a caveat before the reduction requirement is waived, requiring companies in the process of obtaining ELs on Aboriginal land to provide substantial evidence of land access issues and to confirm negotiations are still ongoing.

Other industry representatives raised issues concerning lengthy timeframes associated with access to Aboriginal land. They argued that rent should not be charged for land that they have been unable to explore due to access restrictions beyond their control.

Industry representatives also recommended that the NT Government increase its resources for the Exploration Evaluation team within the Department of Mining and Energy to undertake geological and

technical evaluation, as well as advice to ensure appropriate exploration is occurring or recommend turnover to facilitate industry growth.

Government response

Many of the concerns raised relate to the Minister's inability to waive the EL reduction requirement following the first renewal period. The department has carefully considered the feedback provided and acknowledges the need for flexibility in certain circumstances. As such, the department supports the option to waive all or part of the EL reduction requirement after the first renewal period only in exceptional circumstances.

It is proposed that a policy be developed to outline specific criteria under which a reduction requirement of less than 50% may be permitted in exceptional circumstances. The proposed policy would include clear guidelines in the application of any such provisions and the requirement for supporting documentation to demonstrate the extenuating circumstance. Further consideration on the proposed policy, including the specific criteria will be undertaken as the reforms progress.

The capacity to waive rent on Aboriginal land is outside the scope of the proposed reforms and is prohibited by ALRA, which requires the government to pay rent and other specified payments for mining interests to the land council[4]. These matters will be further considered throughout the reforms.

Feedback concerning the need to increase resources for the Exploration Evaluation team is acknowledged and the department will consider the impact of its work as part of its ongoing considerations.

7.7. Notice before starting authorised activities for exploration (r.71)

The current Regulations specify that the title holder of an EL or extractive mineral exploration licence (EMEL) is required to provide landowners/occupiers at least 14 days' notice before commencing exploration activities on the land. However, the issue of whether one notice is adequate to cover the full field season or if one notice should be given for each proposed entry is not stated in the Regulations.

The discussion paper proposed to clarify these issues by specifying that the title holder must give written notice prior to each entry, unless the landowner/occupier has agreed to a different frequency of notices.

There were differing views from industry representatives on the frequency of entry notice requirements. Some industry representatives supported the proposed changes and suggested that the notice requirements include additional details of the proposed operations, timing and duration before entry. They stated that this practice aligns with entry notice requirements in other jurisdictions.

Other industry representatives did not support multiple notice requirements stating that one notice at the beginning of field season for a defined length of time would be sufficient unless a different frequency of notices was agreed to with the landowner/occupier.

Government response

With the exception of Aboriginal land, landowners and/or occupiers cannot prevent companies from conducting exploration on their properties. However, the process should be collaborative, providing an opportunity for exploration companies to engage with landowners and/or occupiers and to discuss suitable arrangements to ensure mutual understanding and cooperation.

The department has considered the feedback provided and supports the proposal for companies to give the landowner/occupier a single notice at the beginning of the field season for a defined length of time (i.e. an annual

[4] *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, s 16

field season). Should a different frequency of notices be agreed to with the landowner/occupier, the Act will continue to provide flexibility to negotiate notice requirements as required.

5.3. Extractive mineral titles

9.1. Application for and grant of extractive mineral exploration licence (s.47)

The discussion paper proposed a number of changes concerning the application and grant of EMELs. This included:

- the ability to grant an EMEL for up to three years instead of two years
- requirements to include a 30 day moratorium for EMEL applications that is consistent with the process for EL applications
- requirements to restrict the number of granted EMEL blocks that can be held to eight blocks
- requirements to limit an application for an EMEL from four blocks to one block.

There were varying responses from industry representatives on the ability to grant an EMEL for up to three years. While some industry representatives supported the proposal, other industry representatives stated that the two year grant period was already sufficient for an EMEL explorer to conduct exploration. They stated that the EMEL grant period should not be increased in order to prevent land banking of potential extractive mineral deposits.

One industry representative did not support the changes to reduce the number of granted EMEL blocks that could be held, stating it would limit exploration investment into the Territory. They expressed concerns that it would restrict the ability of an EMEL explorer to conduct widespread simultaneous exploration for extractive minerals across multiple licence areas, and that it would impede on willing businesses from completing exploration.

The industry representative also stated that limiting an application for an EMEL to a single block was not practical since one block was an insufficient area to obtain an EMEL over a prospective extractive mineral resource. They stated in some instances a prospective extractive mineral deposit may be larger than a single block, which would mean an applicant would need to obtain multiple EMELs in order to enable exploration and delineation of that deposit. It contrasts with the standard practice in mineral development, in which an exploration title should be considerably larger in order to allow exploration to identify prospective areas that will later form the basis of a mineral permit or lease.

Government response

The department has considered the feedback raised concerning the application and grant of EMELs and intends to revise the following proposed amendments to:

- *remove the EMEL block restriction requirement in which no more than eight blocks can be held at any one time*
- *increase the number of blocks that can be applied for under an EMEL application from one block to a maximum of two blocks.*

9.5. Authorised activities under extractive mineral lease (s.57)

The discussion paper identified that the Act does not allow for extractive minerals to be moved from either an extractive mineral permit (EMP) or EML to another granted EML for processing, storage and removal. To enable the Territory to respond to the emerging needs of extractive operators and support large scale

operations, it is proposed to allow extractive minerals from one extractive mineral title (either EMP or EML), to be transported to another granted EML for processing, storing and removal.

Industry representatives strongly supported the ability to transport extractive minerals between extractive mineral titles. They stated the constructive changes will allow for new industries to emerge that were previously restricted by the Act.

Environmental representatives emphasised the need for stringent environmental regulation, including bespoke conditions in mining environmental licences to deal with impacts from dust, noise and emissions.

Government response

The NT Government remains committed to supporting the growth of a safe and sustainable resources sector that will build and advance the Territory's economy. It is acknowledged that should any activities involve substantial disturbance to a mining site, an environmental (mining) licence commensurate with the risk of the mining activity's environmental impact will be required.

5.4. Fossicking

12.1. New mineral lease for tourist fossicking

The discussion paper proposed a new mineral lease for tourist fossicking (MLTF) to allow a title holder to conduct general fossicking activities for tourists who pay a fee to participate in those activities. Activities under the proposed MLTF would be administered outside of the existing fossicking provisions under Part 8 of the Act. The Minister would retain the discretion to limit the number of MLTFs that could be granted in any particular area at any one time.

The discussion paper proposed that the new MLTF would allow title holders to:

- conduct commercial fossicking tours on a title area no greater than 40 hectares
- use mechanical tools to push back topsoil to a maximum depth of one metre to facilitate fossicking
- apply for a MLTF for a maximum grant period of five years which can be renewed more than once
- have exclusive right to apply for a mineral lease for small scale mines (MLSSM) should a mineral resource of economic interest be discovered.

One fossicking representative stated that the proposed new MLTF should be reconsidered as it would provide no benefit to industry, tourism, fossickers or the community.

One industry representative queried the proposed maximum number of MLTFs that would be available and whether a holder of a MLTF would be responsible for any fossickers that have not rehabilitated their works.

The Heritage Branch of the Department of Lands, Planning and the Environment queried the referral process and whether the new mineral lease categories will be referred to the Heritage Branch.

Government response

The intent of the proposed new MLTF was to transition current small MLs into this new category. While the department accepts the feedback that the proposed MLTF may not benefit the general fossicking community, the proposed MLTF will remain in the Act to provide an avenue for commercial fossicking tours in the future.

The Minister will be able to limit the proposed number of MLTFs in any particular area at any one time. Further details on this proposal and conditions for the new MLTF will be considered as the reforms progress.

Further consultation to ensure specific referral processes are being adhered to will be undertaken with the Heritage Branch.

12.3. New permit for fossicking

To better facilitate the growing interest and tourist potential of recreational fossicking in the Northern Territory, the discussion paper proposed a new fossicking permit that would be available to individuals, family groups, clubs and commercial fossicking tour operators for a small annual fee. A financial penalty would be implemented for those conducting fossicking activities without a permit.

The discussion paper proposed that when applying for a permit, the Minister would consider all available information about the applicant before issuing the permit, including whether the applicant has been or is the subject of complaints and/or legal proceedings relating to alleged fossicking offences.

Under the proposed reforms, a holder of a MLTF or any person attending a tour conducted on a granted MLTF would not be required to obtain a permit, provided that the activities are conducted within the MLTF.

There was no consensus among fossicking representatives on the proposed new fossicking permits.

Several fossicking representatives supported the introduction of the new permit stating that it would be a positive step towards enhancing recreational fossicking. These groups emphasised that a fossicking permit would help keep records of fossickers, particularly those who commit wrongdoing. They also advocated that money raised from the fossicking permits be reinvested to support and develop the fossicking community.

Other fossicking representatives did not support the proposed reforms and raised concerns that the introduction of a fossicking permit fee would discourage fossicking in the NT. These representatives queried where the revenue raised would go and whether permits would benefit the fossicking community if they were not being reinvested into the fossicking community.

Fossicking representatives requested that the NT Government reexamine its fossicking permit fees to ensure a financial burden is not placed on individuals who currently do not pay a fee to conduct fossicking activities. These representatives also expected fossicking permits to be cheaper for NT residents, particularly for those with an eligible seniors card. They recommended that the NT fossicking permit be issued for a period of 10 years or lifetime and suggested that the NT would benefit from adopting the Western Australia Section 40E permit system[5].

Heritage Branch stated they would like the opportunity for inductions to cover interfaces with other legislation such as the *Heritage Act 2011*.

Government response

The department acknowledges the diverse views expressed by stakeholders concerning the proposed fossicking permit. Permits are being introduced to allow for better regulation of fossicking activities. While it is anticipated that the revenue generated from these permits will be minimal, the fees collected will be retained by the department and used to offset some of the promotional costs for fossicking activities.

[5] https://www.dmp.wa.gov.au/Minerals/Permit-Section-40E-over-granted-2421.aspx

Further details about the proposed permit including its term and the potential reduced costs for seniors will be considered as the reforms progress.

Further consultation to increase educational information about NT heritage sites will be undertaken with the Heritage Branch. This could involve incorporating information to the Fossicking NT website on the conservation of natural and cultural heritage sites in the NT.

12.7. When consent required (s.138)

The discussion paper provided an overview of the consent requirements for fossickers, with the aim to clarify that consent in relation to Aboriginal land pertains to Aboriginal land for the purposes of Part II of the *Aboriginal Land Act 1978*[6] and not Section 41 of the ALRA[7]. This is because the ALRA currently allows for agreements with Traditional Owners to provide access to land for fossicking without the need for written consent (only a permit).

Fossicking representatives believe the consent requirements for fossicking on different types of land should be simplified, including Aboriginal land, pastoral land, title areas and private land. They advised that current consent requirement often involve multiple consents and notification, which can be confusing and time consuming, and that a streamlined approach should be taken.

One fossicking representative stated that the process of notifying landowners or occupiers is a constant source of friction. They stated that a better solution needs to be found that allows direct communication between fossickers and landowners/occupiers, acknowledging that operational and safety concerns should take precedence over privacy concerns.

Government response

The Act outlines the notification and consent requirements for accessing land to fossick. This information is broadly summarised on the Fossicking NT website.

Due to the numerous interests associated with the land, it is not always possible to streamline notification and consent requirements. When requesting access to fossick, it is important to take into account all interests associated with the land. For example, access to Aboriginal land is administered by ALRA, while other notification and consent requirements may reflect varying interests in the land, such as a pastoral lease with a number of overlying mineral titles.

However, to address some of these land access issues, it is proposed to repeal Regulation 102[8], which will remove the requirement to obtain written consent to fossick for gold in an EL title area where authorised activity is being conducted. In addition to revoking this regulation, it is proposed to include a requirement to notify the department and the EL holder when the daily limit of 100 grams of gold (including nuggets) is found in the EL title area. The requirement to provide seven days' notice to the EL holder prior to conducting fossicking activities for gold will still be required.

The facilitation of communication between fossickers and landowners/occupiers by the department is outside the remit of the Act. Fossickers are encouraged to make their own enquiries or to contact the department should

[6] Part II of the *Aboriginal Land Act 1978* outlines conditions of a permit to enter and remain on Aboriginal land.
[7] Section 41 of the *Aboriginal Land Rights (Northern Territory) Act 1976* outlines the consent requirements for exploration licences.
[8] Regulation 102 of the *Mineral Titles Regulations 2011* states that for section 140(3) of the Act, a person who intends to fossick for gold on land in the title area of an EL requires the written consent of the title holder if the title holder is actively conducting authorised activities on that land.

they require further assistance in obtaining landowner/occupier details. The department will continue to engage with stakeholders on the most appropriate approach to obtain current landowner/occupier details.

5.5. Mineral leases

8.1. New mineral lease for small mines (s.41)

The discussion paper outlined the introduction of a new mineral lease for small scale mines (MLSSM) which intends to accommodate small scale mining operations, with application requirements to be less stringent than those of a general ML.

The discussion paper proposed that the new MLSSM would:

- exclude the requirement for small scale miners to provide 'evidence of an ore body or anomalous zone of likely economic value' when applying for a title area that does not exceed 40 hectares
- allow the title holder to apply to reduce or simplify reporting on MLSSMs when there is low level activity.

Fossicking and industry representatives supported the introduction of a new mineral lease category for small scale mines, stating that it would provide an accessible pathway for small scale miners to pursue their ventures with simplified annual reports or exemption from certain reporting requirements.

One industry representative stated that the new MLSSM should also be replicated for extractive minerals. They suggested it could streamline the application process and ongoing reporting requirements for the development of small extractive mineral deposits.

Another industry representative recommended that consistent reporting standards and criteria should be implemented for all mining operators, regardless of scale. They stated that small mines should follow minimum standards that align with the Mineral Development Taskforce Final Report and its focus on social licence and trust in regulators through transparency. They suggested a user friendly reporting template could be developed to reduce the administrative burden for both the title holder and the NT Government.

Environmental representatives did not support the new MLSSM and believed it was inappropriate to incentivise companies to engage in mining activity without evidence of a sufficiently viable resource. These representatives believed that removing these requirements for small mines would increase the risk that companies will enter care and maintenance, and possibly even abandon their sites without meeting rehabilitation requirements after experiencing financial difficulties.

Government response

The proposed MLSSM which will accommodate for small scale mining operations was generally accepted by stakeholders.

The proposal to establish a MLSSM for extractive minerals (limited to 40 hectares) will not be required as extractive mineral companies can already apply for an EMP, up to a maximum size of 100 hectares, to develop small extractive mineral deposits.

The proposed MLSSM will include provisions to allow the title holder to apply to reduce or simplify reporting for their title area when there is low level activity. The department has carefully considered the feedback provided and supports the proposal to develop a simplified reporting template that will reduce administrative burden for both the title holder and the department.

Concerns that the proposed MLSSM will not be exempt from rehabilitation requirements is incorrect. The MLSSM will still be required to pay a mining security and obtain an environmental (mining) licence commensurate with the risk of the mining activity's environmental impact. This includes obligations to rehabilitate structures and facilities and to manage environmental impacts during care and maintenance periods.

8.3. New expenditure condition on a mineral lease

The discussion paper provided an overview of the introduction of a reportable minimum expenditure condition on MLs. This new condition would also apply to the two new MLs for fossicking and tourist fossicking.

While it is yet to be determined on how this provision would work, one proposal for MLs would be to apply the expenditure condition only if the ML is licensed under the *Environment Protection Act 2019* (the EPA) to conduct:

- exploration or other development activities (prior to the commencement of production) – $10,000 or $100 per hectare
- care and maintenance activities – $2,000 or $50 per hectare.

There was no consensus among industry representatives on the introduction of a reportable minimum expenditure condition for MLs.

One industry representative who supported the new reportable minimum expenditure conditions for MLs noted that 65% of current MLs will be transferred to the new mineral lease category for small scale mines. They stated that the reporting requirements for these MLSSMs will be limited, which may not achieve the intended economic expansion.

The industry representative also recommended that the NT government provide a reporting template for all MLs, including comprehensive categories for admissible and non-admissible expenditures. They stated that non-admissible expenditure such as environmental monitoring, surveying, infrastructure development, consultation and final investment decision studies are currently not being reported, leading to a potential misconception by the NT Government that no expenditure is occurring on these mineral titles.

Other industry representatives did not support the introduction of a new reportable minimum expenditure conditions for MLs. It was suggested there may be a number of challenges when establishing infrastructure and mining activities on a mineral lease and that high rents on mineral leases already demonstrate a company's commitment to setting up mining operations.

Government response

The intent of the new expenditure condition for MLs is to ensure that new ML holders are progressing towards production. The following amendments are currently being considered in light of the feedback provided by stakeholders:

- *to implement the new expenditure condition to MLs for mining and small scale mining (MLSSMs), focusing on MLs that will progress towards production rather than prospecting*
- *to expand the expenditure report to include admissible and non-admissible expenditure, demonstrating the costs of doing business in the NT*
- *to introduce a fee for non-compliance in the event that the new expenditure condition is not met.*

The reportable minimum expenditure condition on MLs will continue to be further considered as the reforms progress.

5.6. Mineral title activities and conditions

11.4. Variation of conditions of mineral title (s.100)

The discussion paper outlined the two types of variations to an expenditure condition[9], including retrospective variations and a variation to expenditure for the current reporting period. In order to reduce the practice of not complying with the expenditure condition and then requesting a variation to that condition, the discussion paper proposed to:

- remove the capacity to apply for a retrospective variation following the end of a reporting period
- require that any requests to vary an expenditure condition must be submitted within the first six months of each reporting period with no variation to conditions to be accepted after this time.

Industry representatives did not support the proposed changes. They expressed concerns that the removal of retrospective variations could lead to an application for a waiver of expenditure conditions in advance, resulting in more work for both industry and the department. It was suggested that companies may not know whether they will meet their expenditure condition six months into their reporting term, and that delays in field work or waiting for tests may not always be apparent in the first six months.

Government response

The retrospective variation to an expenditure condition is currently contradictory to the loss of blocks penalty[10], however the only current alternative under the Act is to cancel the mineral title. To remedy this issue and remove the need for a variation to be applied, the provision will be removed. This will allow the loss of blocks penalty to be applied, as it was intended to be, when the expenditure condition has not been met for a period of two consecutive years. To avoid the risk of a loss of block penalty, it is imperative that companies identify a realistic expenditure when applying for a mineral title and lodging their annual expenditure reports.

5.7. Mineral titles management

10.6. Amalgamation of title areas (r.63)

The discussion paper identified that the Act required greater clarification on the amalgamation of title areas. The discussion paper proposed to:

- include that the replacement title for amalgamated ELs, where their combined age is greater than six years, would be deemed to be in renewal for rent purposes and issued for a period not exceeding the initial grant period
- provide the Minister power to request ad hoc reports that cover a specified period, or to include a requirement for an annual and expenditure report to be lodged for the period from the date of last lodgement until the date of amalgamation. The report would be required 60 days after the date of amalgamation

[9] For an EL or mineral exploration licence in retention (ELR), the title holder must carry out technical work in accordance with the expenditure requirements specified in the title.
[10] A rolling cumulative expenditure formula, which allows underspends to be made up in the following year or overspends to offset an underspend in the following year and so on.

- provide the Minister discretion to waive the late lodgement fee if satisfied that the person has a reasonable excuse for not lodging on time.

There was no consensus among industry representatives on how the replacement title for amalgamated ELs should be calculated.

One industry representative recommended that when ELs are amalgamated, instead of combining the ages of ELs, to select the EL that is in the older year and set the new amalgamation for that year. Other industry representatives suggested that the amalgamated title should be calculated by averaging the combined years of the titles. It was also suggested that the average of the titles' combined years could be rounded to the nearest whole year.

Government response

The intent of this section was to validate the existing process for amalgamating ELs by incorporating this process into the Act. The proposed changes would provide greater clarity and transparency on the current EL amalgamation process, which has been in place since 2011.

5.8. Non-compliant existing interests

Non-compliant existing interests (NCEIs) are historical titles granted under previous mining legislation. They include authorised holdings granted under the *Mining Ordinance 1939-1979* and mineral claims granted under the *Mining Act 1980*.

The discussion paper highlighted that the majority of remaining NCEIs do not have an appropriate mineral title to convert to as their activities are neither mining related or ancillary to mining. Additionally, while the Act provides the Minister with the power to make a decision to take an action under the transitional provisions, in relation to NCEIs, further clarification of this power is required to ensure that the power to then carry out the action is beyond doubt. It is proposed to:

- clarify the Minister's power to take an action in relation to an NCEI under the Act
- include criteria to ensure the Minister is satisfied that all appropriate steps have been undertaken before taking an action, such as cancelling an NCEI (e.g. criteria are met in searching for a beneficiary of the title, and no one is found)
- modernise rent, introduce an expiry date and capacity for renewal for authorised holdings converted to a mineral title.

A number of representatives with authorised holdings did not support the proposed changes to NCEIs. These groups expressed concerns about the Minister's ability to modify, convert and cancel authorised holdings, arguing that the Minister does not have the authority or jurisdiction under the *Mining Ordinance 1939-1979*. Another representative stated the Minister had no power to cancel authorised holdings because they were not mineral titles.

One representative stated they did not oppose the proposed changes as long as the changes did not adversely impact their lifestyle or the continuation of their mineral title.

Authorised holdings representatives suggested that any conversion of authorised holdings should require the holder to receive benefits that are equal to or better than what they currently receive. They also suggested that they should be compensated for any rights that they would have lost, including the miner's right that is required for these holdings. An example provided was to be given a different title that offers security, permanency and certainty at the department's expense.

Government response

There appears to be a general misunderstanding by a number of stakeholders of what constitutes an authorised holding. An authorised holding is a mineral title and not a crown lease in perpetuity. It is a right given by virtue of a miner's right under the Mining Ordinance 1939-1979 to mark out areas of land for purposes such as prospecting, residence/business, machinery, tailings, washing, market garden and quarrying.

The proposed changes intend to modernise these holdings so that they align with all other mineral titles under the Act. It is not the intention of these changes to remove existing rights. The holder of an authorised holding will retain the right to occupy the authorised holding, provided that they comply with conditions, such as the payment of annual rent and administration fees. An expiry date and right of renewal will be included in the changes. These changes will preserve the holder's rights while ensuring consistency across all titles under the Act.

5.9. Rent, fees and charges

The discussion paper proposed the introduction of a fee schedule to partially offset the administrative costs for the processing of applications. This included an application fee between 100 and 200 revenue units for the following applications:

- expenditure project area
- variation of an expenditure project area
- division of title area into separate parts
- amalgamation of mineral titles, where requested by the title holder.

Additionally, an application fee between 500 to 700 revenue units was also proposed for the new mineral lease categories for tourist fossicking, fossicking and small scale mining.

Industry representatives did not support the introduction of a cost recovery model for the processing of applications under the Act. They emphasised that the mining sector pays a substantial amount in royalties each year and that additional expenses associated with cost recovery discourage business in the NT.

Industry representatives stated that some of the proposed fees are unreasonable as they are a result of the department's regulations. An example provided was the requirement for two mineral titles if a portion of the land falls under both Aboriginal land and pastoral land. An amalgamation of the titles would then occur in order to reduce administrative costs for land council land access agreements and exploration deeds, which are typically priced per title rather than per block or area.

Industry representatives requested that more thorough consultation is undertaken before any fee schedule is introduced.

Government response

Concerns regarding the introduction of a fee schedule for processing various applications are acknowledged and recognised. It is important to note that the proposed new fees were intended to be implemented from the commencement of the Act in 2011, however these fees were not introduced at that time, resulting in a delay in their application.

The proposed application fees are intended to be minimal and is balanced with the proposed removal of application fees for variation of conditions and reduction variations (waiver). In 2023-24, a total of 429 applications were received for both of these applications. At $135 per application, the removal of these application fees would have resulted in $57,915 in savings. Prior to the introduction of any fee schedule, the department will undertake further consultation with industry stakeholders.

The process to split applications between areas under Aboriginal land and other land tenure will remain in place. This will ensure that the grant of non-Aboriginal land can continue to be processed expeditiously.

5.10. Reporting

Reporting provides an opportunity to assess potential and actual activity as well as provide information on resource exploration, development and production. The Act provides that a mineral title holder must provide various reports on activities conducted in their title area.

The discussion paper proposed changes to align with current practices, amend existing report names and lodgement due dates, and to provide the Minister with the authority to conduct an audit on amounts claimed as expenditure.

Industry representatives generally supported the proposal to amend the lodgement dates of expenditure reports and reserves reports to 60 days after the end of each operational year, which will coincide with the lodgement of the annual report. They also supported the proposal to remove the requirement that title areas must be no more than five blocks apart to apply for amalgamated reporting.

One industry representative also recommended that care and maintenance activities be either excluded from reporting or considered for simplified annual reporting.

Another industry representative recommended that approved reporting periods should not exceed an annual frequency in order to ensure the department has contemporaneous data and that changes to conditioning can be made appropriately.

The proposal for ELs to provide a reserves report was not supported by industry representatives. They stated that many EL holders do not know what reserves are on their ELs in the earlier years and queried whether this requirement will commence during the later years of the EL.

One fossicking representative stated that stricter monitoring and reporting for ELs should be implemented to ensure that companies are genuinely engaged in exploration activities. They suggested regular audits and penalties for false reporting to prevent the misuse of ELs to block access to fossickers.

Government response

The proposal to amend the lodgement dates of expenditure and reserves reports to coincide with the lodgement of the annual report was supported by stakeholders. The alignment of the lodgement dates for these reports will streamline efficiencies in reporting.

The ability for companies to submit simplified annual reports for care and maintenance activities is supported by the department.

The reserves report will be designed so that it is not onerous for EL holders as the department is aware that the majority of EL title holders would not have anything to report. Methods of reporting under consideration may include:

- *a form that allows the EL holder to tick a box indicating they have 'nil resources to report' or*
- *a section within the annual report in which the EL holder states that:*
    - *there are 'nil resources to report' or*
    - *provides details of any resource estimations that have been completed.*

The removal of the requirement to obtain written consent to fossick for gold in an EL title area where authorised activity is being conducted will alleviate some land access issues for fossickers (see 12.7. When consent required).

6. Additional themes

Stakeholders provided a diverse range of views and recommendations, including matters that had not been specifically addressed in the discussion paper. These included matters relating to:

- transparency on mineral title applications in conflict
- improving equitable land access between mining companies, pastoralists and fossickers for fossicking activities
- improving conflict resolution mechanisms for land access disputes outside of the Northern Territory Civil and Administrative Tribunal (NTCAT)
- the conversion of MLs to ELs for companies who wish to retain the title area for exploration activities but do not intend to mine.

Government response

The process of assessing mineral title applications in conflict are provided on the NT Government website. The guideline outlines the criteria that is taken into account when two or more applications are made for a mineral title over the same area. The department acknowledges the feedback provided and is committed to increasing transparency and confidence in the application process. The department intends to achieve this by providing additional information in the assessment outcome for applications in conflict.

The holder of a mineral title pays substantial fees and rent for the privilege of holding a mineral title. Their activities generate income for the Territory and create downstream economic benefits through work programs and mining operations. Facilitating land access through constructive and respectful dialogue is essential to support the coexistence of activities between persons with different interests in the land.

The department does not intend to implement any changes to the Tribunal dispute resolution process for land access disputes. The Act provides clear rights for authorised fossicking and the NTCAT remains the appropriate body to resolve legal disputes in this area. However, the department will continue to engage with stakeholders through ongoing education and awareness to ensure all parties are aware of their rights and responsibilities under the Act and the Code of Conduct for Mineral Explorers in the NT.

The department notes the ability to convert MLs to ELs appears to be inconsistent with the objectives of the Act, which is focused on promoting mineral production. It is also currently unknown how the ability to convert MLs to ELs would affect other corresponding legislation such as the ALRA and NTA. As such, it is not intended to amend the legislation to convert MLs to EL at this time.