



18 December 2019

Ms Karen Avery, Executive Director  
Environment Policy and Support  
Department of Environment and Natural Resources  
GPO Box 3675  
Darwin NT 0801

Via email: Karen.Avery@nt.gov.au  
Environment.Policy@nt.gov.au

Dear Ms Avery

### **Comments on the revised draft Environment Protection Regulations 2019**

The Minerals Council of Australia Northern Territory Division (MCA NT) welcomes the opportunity to provide comment on the Northern Territory Government's revised Draft Environment Protection Regulations that were released for public review on 5 November 2019.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible, attuned to its communities' needs and expectations.

The MCA NT has actively engaged in the reforms process, providing submissions on Northern Territory Government's draft policy, strategy, discussion paper and draft legislation. The MCA NT has consistently advocated for policy and regulatory settings based on sound science and commensurate with risk, and developed via *bona fide* consultation with our organisation and members of Territory-based mining companies.

### **General comments**

These revised draft regulations are a substantial improvement on those released in October 2018, in relation to a number of matters, including:

- Time limits for government or NT EPA delivery of decisions in relation to the environmental impact assessment (EIA) and approvals processes, in addition to limits for consultation, to improve efficiency of current processes
- Additional information to define the purpose of strategic EIA
- Clearer description of requirements for proponents wishing to submit significant variations to a project during the course of an EIA process including pragmatic options for the NT EPA to consider when making a decision on how to assess and manage significant variations submitted by the proponent
- More detailed provisions relating to the termination and suspension of an EIA process

- A number of regulations include the requirement or option to consult with consent authorities, in addition to proponents before decisions are made or published
- Government and NT EPA decisions are to be published with statements of reason or 'show cause' to explain or justify decisions
- Clear timeframes for the NT EPA to make a decision on whether or not to accept a referral decision
- Efficiency of EIA processes is supported by allowing an EIA to continue while Terms of Reference (ToR) for a variation are developed (i.e. no 'stop the clock' on assessing the main project proposal while the proposed variation is assessed)
- The EIA process can be even further streamlined by the NT EPA accepting self-referral and draft ToR prepared by the proponent
- EIA options and pathways are well described and illustrated in the Proposed EIA and Approvals Timeline supporting document, except by EIA via Inquiry (Level 4).

The MCA NT acknowledges the government's commitment to deliver a regulatory framework for the resources sector that is more efficient without compromising effectiveness of environmental protection. While significant improvements have been made, other measures within the regulation are unlikely to result in more streamlined process and several may act to disincentivise future investment in the sector.

Furthermore, the regulations introduce measures (detailed in the body of this submission) that are inconsistent with aims to ensure that regulatory requirements be commensurate with environmental risk and may adversely impact the industry without improving environmental protection or streamlining EIA or approval processes. Furthermore, many of these would create considerable uncertainty for the proponent and undermine confidence in the process. Those of greatest concern include:

- The authority of the NT EPA to reconsider the EIA level of a proposal at any time. These measures may force the proponent to follow a more expansive or rigorous EIA pathway, even where the EIA was close to completion. The authority of the NT EPA to amend ToR for an EIA at any time during an EIA process, forcing the proponent to substantially alter its planning, processes and resources to meet differing or a greater number requirements even if the EIA process was nearing completion
- If a project is in the middle of an EIA and new information indicates that the project might trigger the EPBC Act, the NT EIA process should NOT be suspended until after EIA under the EPBC Act is completed. In line with Commonwealth and NT Government commitments to coordinate assessment and approval processes both EIA processes should proceed concurrently
- There are no limits or controls on the number of times or timing when the NT EPA can 'stop the clock' and require the proponent to provide new information
- The NT EPA has the authority to recommend to the minister that a proposed project not be assessed, in the absence of even the most basic level of EIA which is inconsistent with a merits based process
- There are no controls or limits on measures for the NT EPA to seek costs from the proponent, including inappropriate charges for services that are core business for the NT EPA and government, including its authority to suspend any EIA process or decision until fees are paid
- Definitions are required for key terms including 'material omission,' 'material difference,' and 'protected environmental area.'

Attachment A provides a detailed summary of the key concerns with the revised Draft Regulations, including both the above and other issues. Attachment B summarises MCA NT recommendations to address the concerns raised.

### **Closing comments**

The MCA NT welcomes the substantial improvements made by the government's amendments to the 2018 draft draft regulations in. Despite this progress, the MCA NT considers further amendments – outlined in Attachments A and B - are required to provide certainty for proponents.

The Regulations include several opportunities for consultation between the NT EPA, the government and the proponent during an EIA process. For the regulations and Act to be considered fair, these consultations must be *bona fide*. Importantly, the NT EPA and government should ensure proponents are provided a genuine opportunity for draft decisions to be modified on the basis of these consultations.

For the desired efficiencies and effectiveness of these regulations to be realised key agencies need to be adequately resourced and staff must have a sound understanding of environmental risk and its mitigation.

Should you require further information or clarification, please do not hesitate to contact me on 08 8981 4486 or via email on [Janice.Warren@minerals.org.au](mailto:Janice.Warren@minerals.org.au).

Yours sincerely



(Dr) Janice Warren

Manager – Policy and Research

Detailed comments on draft NT Environment Protection Regulations (released November 2019) from Minerals Council of Australia Northern Territory Division (MCA NT)

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<p><b>Early refusal to allow environmental impact assessment (EIA) for a referred proposal</b></p>	<p>56 (2)(d) Decision on accepted referral other than proponent-initiated EIS referral</p> <p>57(1)(e) Decision on proponent-initiated EIS referral</p> <p>61 Consultation on proposed recommendation to refuse environmental approval</p> <p>64 Minister’s decision on recommendation</p> <p>66 Show cause process</p> <p>67 Time for making decision</p> <p>68 Statement of reasons</p> <p>69 Notice of decision</p>	<ul style="list-style-type: none"> <li>The NT EPA should not be able to recommend to the minister to not grant an environmental approval (EA) before a referred proposal has been allowed to assessment. The Division containing these regulations outlines processes to allow the level of an EIA to be set for a project with an accepted referral. Not allowing a referred project to be assessed, even at the lowest level of EIA (L1, Assessment on Referral Information) denies a project natural justice and is inconsistent with the principle of merits based assessment. Furthermore, it does not allow relevant environmental issues to be adequately considered prior to the NT EPA recommending the minister deny an EA for a proposed project.</li> <li>If it is highly unlikely that a project could proceed with unacceptable environmental impacts, then the project would be more appropriately rejected <b>after it has been subject to an EIA process</b>, with the NT EPA providing a statement of unacceptable impact, upon which the minister could refuse to grant an EA.</li> </ul>	<p>Remove provisions from the regulations.</p>	<p><b>Recommendation 6.</b></p> <p><b>‘Early refusal’ provisions should be removed from the Regulations: a proposed project should not be subject to rejection unless it has been assessed at minimum on the basis of Referral Information (L1 EIA)</b></p>
<p><b>No limits or controls on NT EPA requirement for proponent to provide additional information, and ‘stopping the EIA clock’ until information is provided</b></p>	<p>77 (1)-(4) Additional information during assessment process</p> <p>78 Publication of direction and information</p> <p>79 Public consultation</p>	<ul style="list-style-type: none"> <li>There have to be some controls or limits on requests for additional information by the NT EPA during an EIA. This includes a requirement for the NT EPA to <b>demonstrate why this information is essential to allow an adequate assessment by the NTG</b>, e.g. a ‘test’ to demonstrate the information is both reasonable and material to the decision.</li> <li>Each ‘stops the EIA clock,’ which has significant financial and other implications (e.g. perception of risk by potential investors) for the proponent and the project.</li> </ul>	<p>An additional provision should be integrated into this/these regulation(s) to require the NT EPA to <b>demonstrate why additional information is essential to allowing the NTG to adequately assess a referred project.</b></p>	<p><b>Recommendation 3.</b></p> <p><b>For every request for additional information, the NT EPA must demonstrate why this information is essential for the NT EPA to adequately assess a referred project.</b></p> <p><b>Proponents should be provided the opportunity to contest the request if considered unreasonable.</b></p>
<p><b>The authority of the NT EPA to reconsider the EIA level of a proposal at any time during an EIA process, forcing the proponent to follow a more rigorous EIA pathway</b></p>	<p>90 NT EPA may reconsider method of assessment</p> <p>92 Decision on method of assessment</p>	<ul style="list-style-type: none"> <li>At the start of an EIA process, after the NT EPA has determined that a proposed project must be formally assessed under the NT Environment Protection Act, it directs a proponent to complete an EIA process at one of four levels commensurate with number, nature and complexity of potentially significant environmental impacts. The proponent then engages in substantial project planning, including completion of baseline studies or desktop analyses consultants are engaged and significant resources committed to completing the EIA requiring fieldwork and which may take many months or years. This work is undertaken in accordance with the requirements of the pathway of that particular EIA level.</li> <li>It is not fair or reasonable for the NT EPA to require the proponent to follow an entirely different EIA pathway to address additional risks recognised or discovered once a proponent has progressed substantially down the initial EIA pathway, when there are more appropriate and commercially-viable alternatives to ensure that these risks are adequately addressed through the initial EIA level.</li> <li><b>Note:</b> if during an EIA process <b>the proponent changes the design, location or other essential characteristic of the project in ways that substantially increase anticipated or predicted environmental impacts and would have resulted in a higher level of assessment required by the NT EPA</b>, then the proponent would acknowledge and accept that a more comprehensive level of EIA would be required and accept the commercial and other regulatory implications of this significant variation. This situation is catered for in Part 7 the Draft Regulations.</li> </ul>	<ul style="list-style-type: none"> <li>If (as per Regulation 90)             <ol style="list-style-type: none"> <li>Substantial new information about the impacts has become available and the NT EPA would have made a different determination on the appropriate level of EIA required at the start of an EIA process.</li> <li>A more commercially-sensitive alternative should be employed that would not disincentivise investment associated with the uncertainty created by this regulation. Such an approach should be consistent with natural justice and allow the proponent to provide an adequate amount of information to enable the NT EPA to adequately assess the new risk and effectiveness of proposed mitigation This should be captured in a request for additional information:                 <ol style="list-style-type: none"> <li>During the proponent’s preparation of a Supplementary Environmental Report (SER); or</li> <li>During the preparation of a proponent’s Draft Environmental Impact Statement (EIS); or</li> <li>When considering the proponent’s Draft EIS, which the proponent would then address in the Supplement to the EIS.</li> </ol> </li> </ol> </li> <li>The Regulations should include a definition of ‘material variation’ and ‘material impact’ to explain when the NT EPA would be empowered to substantially alter an EIA pathway, terms of reference or other aspect or process of an EIA during an EIA.</li> </ul>	<p><b>Recommendation 1.</b></p> <p><b>If the NT EPA re-assesses the level of environmental risk after the assessment is well-underway, the EPA should instead seek the additional information it needs to adequately assess the newly-discovered risk.</b></p>

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<ul style="list-style-type: none"> <li>• The authority of the NT EPA to amend Terms of Reference (ToR) for an EIA at any time during an EIA process, forcing the proponent to substantially alter its planning, processes and resources to prepare a Draft EIS or Supplement</li> <li>• Inadequate definition of circumstances under which the NT EPA can amend ToR</li> <li>• Inadequate requirements to consult with proponents</li> <li>• inadequate timelines</li> </ul>	<p><b>Subdivision 2. Amendment of ToR</b> 113-122</p>	<ul style="list-style-type: none"> <li>• Unless any amendment to ToR is restricted to addressing <b>only the newly-recognised environmental risk</b>, this new authority could allow the NT EPA to use this opportunity to substantially expand the initial ToR to address other risks that it did not consider when it issued the initial ToR. This would have impacts on a company through imposing a higher level EIA on a proponent that has substantially progressed through a lower level EIA.</li> </ul>	<p>If the NT EPA amends a proponent's ToR when its EIA process is well-underway, then any amendment(s) must address only the newly-recognised environmental risk.</p>	<p><b>Recommendation 13.</b> Should NT EPA amend a proponent's ToR when its EIA process is well-underway, then any amendment(s) must address only the newly-recognised environmental risk(s).</p>
	<p><b>113 (1)(a) and (b) describing circumstances that would authorise the NT EPA to amend approved ToR during an EIA</b></p>	<p>These provisions are poorly explained and should include more specific information, including:</p> <ul style="list-style-type: none"> <li>• The type of information that would trigger review of a ToR</li> <li>• Why would the NT EPA not have been aware of this information before it issues approved ToR?</li> <li>• What kind of 'change in circumstance relating to the environment'?</li> </ul>	<ul style="list-style-type: none"> <li>• Regulations 113(1)(a) and (b) must include more specific definitions for the kind of new information that would empower the NT EPA to amend ToR; why the NT EPA would not have been aware of this information; and what is meant by 'change in circumstance relating to the environment.'</li> <li>• If these cannot be accommodated within the regulations themselves, then they should be included in another instrument or published explanatory document.</li> </ul>	<p><b>Recommendation 2.</b> Regulations 113(1)(a) and (b) must include more specific definitions for the kind of new information that would empower the NT EPA to amend ToR; why the NT EPA would not have been aware of this information; and what is meant by 'change in circumstance relating to the environment.'</p>
	<p><b>115 (1)(a) and (b) describing NT EPA requirements to consult with proponents prior to amending ToR</b></p>	<ul style="list-style-type: none"> <li>• The regulation states that, before publishing draft amending ToR, the NT EPA 'may' consult with the proponent and 'if the proponent is consulted must consider any written submission received from the proponent within the period specified by the NT EPA'.</li> <li>• Considering the potentially significant adverse impacts on a proponent if ToR is inappropriately amended during an EIA process.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulation 115 (1) should be amended to require the NT EPA to consult with the proponent prior to publishing draft amending ToR, and the time period during which the NT EPA must consider any written submission from the proponent must be specified in the regulation.</li> </ul>	<p><b>Recommendation 10.</b> Regulation 115 (1) must be amended to require the NT EPA to consult with the proponent prior to publishing draft amending ToR, and the time period during which the NT EPA must consider any written submission from the proponent must be specified in the regulation.</p>
<p><b>For a significant variation, none of the proposed changes to the EIA pathway include enabling a proponent to provide additional information the NT EPA might find adequate to allow it to complete its assessment.</b></p> <p><b>Further, the regulations do not limit amendments to ToR to address only those environmental issues impacted by the proposed variation.</b></p>	<p><b>172 Decision on significant variation</b></p> <p><b>179 Assessment no longer required</b></p>	<ul style="list-style-type: none"> <li>• If a significant variation is made to the project there is no option that would allow a proponent to provide adequate additional information to satisfy the information needs of the NT EPA.</li> <li>• The current version includes an option that the EIA can continue, with information already received, to assess the significant variation (regulation 172 (1) (a) – (d), and all other options introduce substantial additional requirements on the proponent which may include: <ul style="list-style-type: none"> <li>a) The entire project must be assessed by a different EIA level</li> <li>b) The unchanged portions of the project can continue to be assessed at the original EIA level with only the matters in the significant variation subject to a new and separate EIA process</li> <li>c) For L3 and L4 EIAs, i.e. EIS or EIS + Inquiry. the EIA would continue with amended ToR</li> <li>d) The NT EPA can terminate the entire EIA process ('assessment no longer required').</li> </ul> </li> <li>• For (c) above, the NT EPA should not be able to use this provision to expand ToR beyond the minimum necessary to address additional environmental risks associated with the variation.</li> <li>• For (d) above, the NT EPA should not be empowered to terminate an EIA on the basis of lodgement of a significant variation without first exploring options with the proponent through which an adequately robust EIA process, that satisfactorily addresses additional environmental risks associated with the variation could be completed.</li> </ul>	<ul style="list-style-type: none"> <li>• The different provisions of regulation 172 that address implications of each EIA level should include an option for the proponent to provide additional information to satisfactorily address the information needs of the NT EPA to assess potential impacts associated with the variation.</li> <li>• Any amendments to the ToR should first be discussed and negotiated with the proponent to decide what is required to adequately address the altered environmental risks associated with the variation, and amendments must be restricted to addressing only those matters altered by the proposed variation.</li> <li>• Before the NT EPA terminates the entire EIA process ('assessment no longer required'), it must consult with the proponent to explore other alternatives.</li> <li>• The wording of these provisions should be more explicit, i.e. rather than 'assessment is no longer required,' the regulation should state that the NT EPA may decide to <b>terminate an EIA if the potentially significant environmental impacts of the variation cannot be adequately addressed by the current EIA process.</b></li> </ul>	<p><b>Recommendation 15.</b></p> <p>(a) The different provisions of regulation 172 that address implications of each EIA level must include an option for the proponent to provide additional information to satisfactorily address the information needs of the NT EPA to assess potential impacts associated with the variation.</p> <p>(b) Any amendments to the ToR must first be discussed and negotiated with the proponent to decide what is required to adequately address the altered environmental risks associated with the variation. Amendments must be restricted to addressing only those matters altered by the proposed variation.</p> <p>(c) Before the NT EPA terminates the entire EIA process ('assessment no longer required'), it must consult with the proponent to explore other alternatives.</p> <p>(d) The wording of these provisions must be more explicit, i.e. rather than 'assessment is no longer required,' the regulation should state that the NT EPA may decide to terminate an EIA if the potentially significant environmental impacts of the variation cannot be adequately addressed by the current EIA process.</p>

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<p><b>No controls or limits on measures for NT EPA to recover costs from a proponent, including inappropriate charges for services that are core business for the NT EPA and government and suspending any EIA process or decision until fees are paid.</b></p>	<p><b>241 Recovery of costs</b></p>	<ul style="list-style-type: none"> <li>• Although cost recovery is standard in most jurisdictions, through fees for permits, licences, etc, the regulations do not include any limits or controls on what can be charged to a proponent.                             <ul style="list-style-type: none"> <li>➢ Several provisions should not include such charges for the NT EPA and government to undertake their roles. If boundaries are not established, it may drive the NT EPA to unnecessarily outsource parts of the assessment, including: 241(1)(a) paying the NT EPA or government to engage external consultants to complete assessments for which the NT EPA should have expertise</li> <li>➢ 241(1)(b) the cost of an inquiry panel (for Level 4 EIA), as panel members should either be sourced from the NT EPA or government or paid by the NT EPA or government if required to complete assessments that are the responsibility and role of these bodies.</li> </ul> </li> <li>• The regulation does not require the NT EPA or government to publish fee schedules nor identify maximum caps for costs to be recovered from proponents.</li> <li>• On the whole, industry does not object to paying for publication of notices for EIA documents subject to public consultation and review.</li> </ul>	<ul style="list-style-type: none"> <li>• Any fees to be charged to proponents for EIA processes should be in published fee schedules and capped at a reasonable level.</li> <li>• Proponents should be charged for the NT EPA to engage consultants only if aspects of a project are particularly unusual or largely unknown.</li> <li>• The cost to convene a panel of inquiry should be done at the expense of the government, unless the panel has been convened to review or oversee aspects of an EIA that are particularly unusual or unknown, requiring engagement of experts on those matters.</li> </ul>	<p><b>Recommendation 7.</b></p> <ul style="list-style-type: none"> <li>(a) Any fees to be charged to proponents for EIA processes must be in published fee schedules and capped at a reasonable level.</li> <li>(b) Proponents should be charged for the NT EPA to engage consultants only if aspects of a project are particularly unusual or largely unknown.</li> <li>(c) The cost to convene a panel of inquiry must be done at the expense of the government, unless the panel has been convened to review or oversee aspects of an EIA that are particularly unusual or unknown, requiring engagement of experts on those matters.</li> </ul>
<p><b>If an EIA process is terminated under the regulations, by the NT EPA or proponent, any unspent funds should be returned to the proponent</b></p>	<p><b>242 Fees and charges not refunded</b></p>	<ul style="list-style-type: none"> <li>• There is no justification for the NT EPA or government to retain unspent fees collected from proponents to support EIA processes if an EIA is terminated by the proponent, NT EPA or government.</li> <li>• If an EIA process was terminated by the NT EPA or government, the regulations should not allow the government to pursue proponents to pay any outstanding fees or charges.</li> <li>• There should also be an appeals or dispute resolution process available for proponents who believe that they are being asked to pay fees                             <ul style="list-style-type: none"> <li>➢ for EIA processes that should be core NT EPA or government business, or</li> <li>➢ that are manifestly excessive for the purpose for which they are being collected</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Unspent funds should be returned to the proponent if an EIA process is terminated.</li> <li>• At the time an EIA process is cancelled, any outstanding fees and charges should also be cancelled.</li> <li>• The regulations should include an appeals process for proponents who believe they are being asked to pay fees for services that are the core business of the NT EPA or government or are excessive.</li> </ul>	<p><b>Recommendation 8.</b></p> <ul style="list-style-type: none"> <li>(a) Unspent funds must be returned to the proponent if an EIA process is terminated.</li> <li>(b) At the time an EIA process is cancelled, any outstanding fees and charges must also be cancelled.</li> <li>(c) The regulations must include an appeals process for proponents who believe they are being asked to pay fees for services that are the core business of the NT EPA or government or are excessive.</li> </ul>
<p><b>If a project is likely to include Matters of National Environmental Significance (MNES) under the Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act, the NT EPA should <u>not</u> suspend the EIA of the proposed action until after the Commonwealth Minister's decision on the referral</b></p>	<p><b>83 Suspension of assessment process – referral to Commonwealth</b></p>	<ul style="list-style-type: none"> <li>• There is no justification for the NT EPA to suspend an EIA underway if the project also triggers assessment under the EPBC Act and require the EIAs for both processes to occur consecutively rather than simultaneously.                             <ul style="list-style-type: none"> <li>➢ This would unnecessarily delay and prolong the NT EIA process, at significant expense to the proponent, with no material benefit to be realised in terms of improved environment protection.</li> </ul> </li> </ul>	<p>If a project is required to be assessed under both the <i>NT Environment Protection Act</i> and the EPBC Act, then the NT EIA process should continue in accordance with NT regulatory timelines while commencing and completing the Commonwealth EIA process.</p> <p>This approach is aligned with Commonwealth and NT Government commitments to coordinate assessment and approval processes.</p>	<p><b>Recommendation 4.</b></p> <p><b>If a project is required to be assessed under both the <i>NT Environment Protection Act</i> and the EPBC Act, then the NT EIA process should continue in accordance with NT regulatory timelines while the Commonwealth EIA process is initiated and progresses, such that both EIA processes are concurrent.</b></p>
<p><b>If the NT EPA seeks or requires the proponent to seek independent expert advice, the NT EPA should not be allowed to suspend an EIA underway until the advice is provided</b></p>	<p><b>85 Suspension of assessment process if advice sought or requested</b></p>	<ul style="list-style-type: none"> <li>• There is no justification for the NT EPA to suspend an EIA underway if it seeks or requires the proponent to seek expert advice, unless the advice is not provided by the end of the EIA process.                             <ul style="list-style-type: none"> <li>➢ This would unnecessarily delay and prolong the NT EIA process, at significant expense to the proponent, with no material benefit to be realised in terms of improved environment protection.</li> <li>➢ There is no reason why EIA for other aspects of a project proposal could not continue to be progressed until the one matter for which expert advice is being sought is provided.</li> <li>➢ If, however, all remaining components of a proponents EIA documentation have been completed save the one for which expert advice has been sought, then the timelines applying to recommendations and decisions to be made at the end of an EIA should be paused until this final expert advice is provided and dealt with by the proponent</li> </ul> </li> </ul>	<p>If expert advice must be sought by the NT EPA (either through its engagement of expert consultants or by requiring the proponent to engage expert consultants), then the EIA process should not be halted while this advice is being sought, unless the matter is the final one to be considered in the EIA and all other aspects have already been dealt with in the proponent's EIA documentation.</p> <ul style="list-style-type: none"> <li>• In this latter case, the NT EPA should be able to 'stop the clock' until the expert information is obtained, considered by the proponent and integrated into the proponent's EIA documentation.</li> </ul>	<p><b>Recommendation 11.</b></p> <ul style="list-style-type: none"> <li>(a) If expert advice is sought by the NT EPA, then the EIA process must not be halted while this advice is being sought, unless the matter is the final one to be considered in the EIA and all other aspects have already been dealt with in the proponent's EIA documentation.</li> <li>(b) In this latter case, the NT EPA should be able to 'stop the clock' until the expert information is obtained, considered by the proponent and integrated into the proponent's EIA documentation.</li> </ul>

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<p>If the NT EPA intends on requiring a proponent to abandon its current EIA pathway, it should be incumbent upon the NT EPA to 'show cause' to justify this significant alteration of an EIA substantially underway. The proponent should then be given the opportunity to show cause why the EIA level or process should <u>not</u> be changed.</p>	<p>91 Show cause process (for regulation 92, Decision on method of assessment)</p>	<ul style="list-style-type: none"> <li>If the NT EPA reconsiders the method of EIA under Regulation 90, it must justify this significant alteration of an EIA process that has been substantially progressed and then give the proponent an opportunity to show cause why the EIA level or process should <b>not be changed</b>. If necessary, the NT EPA should propose an alternative that satisfactorily accommodates changed circumstances, designs or other matters that could materially increase anticipated or potentially significant environmental impacts from a project.</li> </ul>	<p>An additional provision should be included under 91(2) requiring the NT EPA to justify ('show cause') why it believes that the current EIA cannot provide adequate information upon which it can satisfactorily complete its assessment, before requiring the proponent to show cause why the method of EIA should not be changed.</p>	<p><b>Recommendation 16.</b> An additional provision should be included under 91(2) requiring the NT EPA to justify ('show cause') why it believes that the current EIA cannot provide adequate information upon which it can satisfactorily complete its assessment, before requiring the proponent to show cause why the method of EIA should not be changed.</p>
<p>The authority of the NT EPA to limit the period within which a proponent must deliver EIA documentation (SER, draft EIS, or Supplement to a draft EIS) should be constrained to what is fair, reasonable and risk-based, and must be done in consultation with the proponent.</p>	<p>96 Submission period for an SER 105 Submission period for an EIS 125 Submission period for an EIS 136 Submission period for Supplement to draft EIS</p>	<ul style="list-style-type: none"> <li>If the risk being addressed by this regulation is to avoid a situation wherein the NT EPA has set the level of an EIA based on referral information but by the time a proponent delivers relevant documents, there is a material change in the environment or other matter that might have caused the NT EPA to set a higher-level EIA, then this regulation is justified..</li> <li>The NT EPA's authority, however, should be constrained to what is a reasonable time limit based on risk and <b>determined in consultation with the proponent</b>.</li> <li>Please note most proponents are driven by financial and other resourcing constraints to complete an EIA process as quickly as possible; therefore, unless the NT EPA's experience suggests that proponents 'drag their feet' in the provision of information required for the NT EPA to complete its assessment in an efficient manner, the MCA NT considers Regulation 96 is unnecessary.</li> </ul>	<p>Imposition by the NT EPA of a time limit to deliver EIA documentation (SER, draft EIS or Supplement to the draft EIS) must include <i>bona fide</i> consultation with the proponent and negotiation of a mutually-acceptable time limit.</p>	<p><b>Recommendation 17.</b> Imposition by the NT EPA of a time limit to deliver EIA documentation (SER, draft EIS or Supplement to the draft EIS) must include <i>bona fide</i> consultation with the proponent and negotiation of a mutually-acceptable time limit.</p>
<p>In setting the assessment period for an EIA at the EIS level, the regulations place no limits on what criteria the NT EPA can use to set those limits.</p>	<p>105(3)(e) In determining the assessment period, the NT EPA must consider any other matter it considers relevant.</p>	<p>'Any other matters' should be limited to those that have real and demonstrable relevance to the potentially significant environmental impacts of a proposal and which form the basis for the NT EPA's decision on which level of EIA a project should be assessed under.</p>	<p>Matters to be considered by the NT EPA in setting the EIA level and period during which EIA documentation must be delivered to the NT EPA, must be limited to those with real and demonstrable relevance to the potentially significant environmental impacts of the proposal.</p>	<p><b>Recommendation 18.</b> Matters to be considered by the NT EPA in setting the EIA level and period during which EIA documentation must be delivered to the NT EPA, must be limited to those with real and demonstrable relevance to the potentially significant environmental impacts of the proposal.</p>
<p>The regulation indicating that before publishing the draft ToR for an EIA by EIS or by EIS + Inquiry the NT EPA 'may' consult with the proponent gives the NT EPA the opportunity to <u>not</u> consult with the proponent. This is counter to a consultative approach to EIS.</p>	<p>106(1)(a) Consultation with proponent</p>	<p>As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore, the term 'may' under 106(a) should be changed to 'shall.'</p>	<p>As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore the term 'may' under 106(1) (a) should be changed to 'shall.'</p>	<p><b>Recommendation 10(a)</b> As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore, the term 'may' under 106(1) (a) should be changed to 'shall.'</p>
<p>The regulation indicating that before publishing the draft amending ToR for an EIA by EIS or by EIS + Inquiry the NT EPA 'may' consult with the proponent gives the NT EPA the opportunity to <u>not</u> consult with the proponent. This is counter to a collaborative approach to EIS.</p>	<p>115(1)(a) Consultation with proponent</p>	<p>As above, as ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent on <b>amendment of ToR</b>; therefore, the term 'may' under 106(a) should be changed to 'shall.'</p>	<p>As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent on <b>amended ToR</b>; therefore, the term 'may' under 115(1) (a) should be changed to 'shall.'</p>	<p><b>Recommendation 10(b)</b> As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore, the term 'may' under 115(1) (a) should be changed to 'shall.'</p>
<p>The NT EPA should be unable to refuse to grant a proponent an extension to deadlines associated with delivery of EIA documentation (SER, draft EIS or Supplement) without a clear justification based on evidence and risk.</p>	<p>97 (2)(b) Extension of period to submit an SER 126 (2)(c) Extension of period to submit a draft EIS 137 (2)(b) Extension of period to submit a Supplement</p>	<p>As discussed with DENR at a Q&amp;A session at the MCA NT (5 Dec 2019), the 'bar needs to be set adequately high' to constrain the NT EPA from imposing unrealistic deadlines for delivery of EIA documentation by a proponent.  Note that most proponents are driven by financial and other resourcing constraints to complete an EIA process as quickly as possible; therefore, unless the NT EPA's experience suggests that proponents 'drag their feet' in the provision of information required for the NT EPA to complete its assessment in an efficient manner, the MCA NT considers Regulations 97(2) (b); 126(2) (c); and 137(2) (b).are unnecessary.</p>	<p>Before the NT EPA refuses to grant an extension for delivery by a proponent of EIA documents, the NT EPA must consult with the proponent and must provide a compelling, risk-based reason for its decision.</p>	<p><b>Recommendation 23.</b> Before the NT EPA refuses to grant an extension for delivery by a proponent of EIA documents, the NT EPA must consult with the proponent and must provide a clear justification for its decision based on evidence and risk.</p>

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
Regarding the NT EPA's environmental assessment report, the regulation indicates that the NT EPA 'may' give a copy of a draft statement of unacceptable impact to the proponent; however, this gives the option of not providing this statement to the proponent. This is inconsistent with a collaborative approach to EIA.	159(1)(b) Consultation (for Environmental Assessment Report)	An assessment by the NT EPA of unacceptable impact would form the basis for the NT EPA to recommend to the minister an EA not be granted, i.e. the proposed project would not be able to proceed. The gravity of such an outcome from an EIA process is such that not providing a copy of the draft statement of unacceptable impact would deny the proponent natural justice.	If the NT EPA concludes, in its environmental assessment report, that a project cannot proceed without unacceptable environmental impacts, then the NT EPA should be required to provide a copy of its draft statement to the proponent.	<b>Recommendation 10(c).</b> If the NT EPA concludes, in its environmental assessment report, that a project cannot proceed without unacceptable environmental impacts, then the NT EPA should be required to provide a copy of its draft statement to the proponent.
The multiple alternative EIA pathways described in this regulation on implications for EIA of projects with significant variations are complex. Greater clarity is required.	172(1) – (6) Decision on significant variation	Because this regulation has multiple sub-regulations (spanning two full pages), with each sub-regulation describing alternative EIA pathways if the NT EPA accepts a notice of significant variation from the proponent, flowcharts should be developed to illustrate these alternatives.	Because this regulation has multiple sub-regulations with each sub-regulation describing alternative EIA pathways should the NT EPA accepts a notice of significant variation from the proponent. Flowcharts should be developed to illustrate these alternatives.	<b>Recommendation 12.</b> Because this regulation has multiple sub-regulations, with each sub-regulation describing alternative EIA pathways should the NT EPA accepts a notice of significant variation from the proponent. Flowcharts should be developed to illustrate these alternatives.
If during an EIA process, the proponent submits a significant variation, then authorising the NT EPA to issue new ToR rather than amendments or additions to the original ToR can result in ToR that are substantially expanded beyond what is necessary to address potential impacts associated with the variation	181(1) Preparation of amending ToR	If a proponent submits a significant variation, the NT EPA may take this opportunity to expand the ToR beyond what is required to adequately address the potential for significant environmental impacts associated with the variation. Consequences for a proponent would include substantially increased costs to address these new terms, including the cost of unnecessary delays in the EIA process.	Unless the significant variation has consequences across a broad range of potentially significant environmental impacts, the NT EPA should be authorised only to amend ToR or prepare an addendum to the original ToR, with both of these options limited to addressing new or expanded potentially significant environmental impacts.	<b>Recommendation 13(a).</b> Unless the significant variation has consequences across a broad range of potentially significant environmental impacts, the NT EPA should be authorised only to amend ToR or prepare an addendum to the original ToR, with both of these options limited to addressing new or expanded potentially significant environmental impacts.
Regarding the NT EPA's publishing of draft amending ToR under Regulation 183, the regulation indicates that the NT EPA 'may' consult with the proponent; however, this gives the NT EPA the option of not consulting with the proponent. This is inconsistent with sound practice and a consultative approach to EIA.	182(1)(a) Consultation with proponent	NT EPA amendments to original ToR could have significant consequences for a proponent and their project, particularly if these substantially expand or change the original ToR beyond what would be required to adequately address any increased risk of unacceptable environmental impact from the project. For this reason, the NT EPA must consult with the proponent. Current wording of the Regulation would provide the NT EPA with an option to not consult with the proponent,	Before publishing draft amending ToR under regulation 183, the NT EPA must consult with the proponent	<b>Recommendation 10(d).</b> Before publishing draft amending ToR under regulation 183, the NT EPA must consult with the proponent
Regarding the NT EPA's decision that the potential significant impacts of the proposed significant variation cannot be avoided or adequately mitigated or managed through approval conditions, Regulation 203 states that the NT EPA 'may' consult with the proponent; however, this gives the NT EPA the option of not consulting with the proponent. This is inconsistent with sound practice and a consultative approach to EIA.	203(3) Decision if statement of unacceptable impact prepared	After the NT EPA prepares its environmental assessment report, and if the proponent has submitted a significant variation, the NT EPA should consult with the proponent. If the NT EPA has concluded that potentially significant environmental impacts associated with the variation cannot be avoided or adequately mitigated or managed, the NT EPA could decide the proposed variation be subject to a new EIA, which would have significant implications for the proponent in terms of uncertainty and added costs.  Through consultation, the proponent may be able to provide adequate alternatives to a direction to subject the variation to a new EIA, or, alternatively the proponent might be convinced or assured of the validity of having to complete an EIA for the proposed variation.	Before making a decision on the need to subject the proposed variation to a new EIA process, the NT EPA must consult with the proponent.	<b>Recommendation 10(e).</b> Before making a decision on the need to subject the proposed variation to a new EIA process, the NT EPA must consult with the proponent.
Regarding the NT EPA's amendments to an EA, Regulation 232 states that that NT EPA must 'make reasonable efforts to obtain the views of any statutory decision-maker that the NT EPA considers may have a view on the amendments in the draft amended EA.' This wording enables the NT EPA to avoid seeking the views of the consent authority for the project, and this is unacceptable	232(2)(b)(i) Consultation on draft amended environmental approval	Final conditions attached to an EA have critical implications for the construction, operation and closure for a project; therefore, these need to be risk-based, practical and relevant, and must also be consistent with subsequent project approvals from the consent authority. For this reason, it is unacceptable for the NT EPA to be able to draft final recommendations attached to its draft EA without these being ground-truthed by the consent authority.	The NT EPA must obtain the views of the statutory decision-maker in consultation with the consent authority when drafting amended EAs.	<b>Recommendation 10(f).</b> The NT EPA must obtain the views of the statutory decision-maker in consultation with the consent authority when drafting amended EAs.



Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations	
<b>Concerns with regulations and provisions that occur in different contexts throughout the draft Regulations</b>					
Suspension of assessment, consultation, and approvals processes to allow the NT EPA to obtain additional information or conduct additional consultation ('Stopping the Clock')					
	<p>Each instance delays the otherwise uninterrupted progress of an EIA assessment and approvals process in line with the explanatory document 'Proposed EIA and Approval Timelines.'</p>	<p>39(4) Additional information about referral</p> <p>83 Suspension of assessment process – referral to Commonwealth</p> <p>85 Suspension of assessment process if advice sought or requested</p> <p>241(3) &amp; (4) Suspension of an EIA process until proponent pays fees and other charges for government cost-recovery</p>	<p>Delays are costly for proponents and render a project more risky in the eyes of potential investors.</p> <p>On the basis the MCA NT does not support the majority of cost-recovery provisions included in these regulations, it does not support 'stopping the clock' until the government is paid these fees.</p>	<ul style="list-style-type: none"> <li>Many of these assessment and approvals processes can proceed while additional information is being sought.</li> <li>NT and Commonwealth government EIA and approvals processes should be concurrent and not sequential</li> </ul> <p>Suspension of EIA and approvals processes, merely on the basis of a proponent not having paid fees, is unreasonable and Regulation 241 (3) and (4) should be removed from the Regulations.</p>	<p><b>Recommendation 22.</b></p> <p><b>Suspension of EIA and approvals processes, merely on the basis of a proponent not having paid fees, is unreasonable and Regulation 241 (3) and (4) should be removed from the Regulations.</b></p>
	<p>Exceptions to the undesirability of 'stopping the clock' apply to</p> <ul style="list-style-type: none"> <li>Periods during which the NT EPA consults with the proponent.</li> </ul>	<p>106(2) Consultation with proponent during drafting of ToR</p> <p>115(2) Consultation with proponent during drafting amendments to ToR</p>	<p>Although 'stopping the clock' delays assessment and approvals processes, as the proponent wears all the risk and costs associated with these delays, the benefits of being able to negotiate satisfactory or superior resolutions of these issues through consultation offsets these risks and costs.</p>		
	<ul style="list-style-type: none"> <li>Periods for the NT EPA to assess a significant variation submitted by the proponent</li> </ul>	<p>190 (note for Regulation 190) Process for significant variation after assessment report</p> <p>192(4) Additional information about significant variation after assessment report</p> <p>199(4) Public consultation (on notice of significant variation)</p> <p>221(4) Public consultation (if the NT EPA accepts a referral of a significant variation)</p> <p>221(3) &amp; (4) Public consultation ((if the NT EPA accepts a referral of a significant variation and conducts public consultation)</p>	<p>If the proponent submits a significant variation at any time during an EIA process, including after an assessment report has been prepared, it is reasonable to 'stop the clock' while appropriate and adequate government and public consultation <b>on the significant variation (only)</b> takes place.</p>		

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<b>Concerns with regulations and provisions that occur in different contexts throughout the draft Regulations (Cont'd)</b>				
<p>Lack of explicit time limits and/or use of the undefined term 'as soon as practicable' and/or 'within the period specified' introduce(s) significant uncertainty regarding duration of EIA and approvals processes</p>	<p>61(1)(b) NT EPA must consider any written submission (on an accepted referral)</p> <p>63(2) &amp; (3) Notice of decision (Decision on accepted referral, including proponent-initiated EIS referral)</p> <p>65(b) The Minister must consider any written comments. 'within the time specified in writing by the Minister'</p> <p>69(2)-(4) The Minister must give notice of a decision on formal assessment of a proposal, including level of assessment</p> <p>111 Approved ToR must be given to proponent</p> <p>113(2) Amendment of approved ToR (if NT EPA proposes to amend approved ToR, he NT EPA must advise the proponent)</p> <p>167(4) Notice of decision to not accept a notice of significant variation</p>	<p>Lack of explicit time limits and/or use of the undefined term 'as soon as practicable' and/or 'within the period specified' introduce(s) creates significant uncertainty regarding duration of EIA and approvals processes</p> <p>...and other Regulations with decisions or processes subject to deadlines, including</p> <p>176(1), 176(2)(c), 187, 197(4), 204(2), 205, 219(4) and 225(2)</p>	<p><b>Two options to address this:</b></p> <ul style="list-style-type: none"> <li>Regulations should include specific timelines, deadlines or time periods (preferable); or</li> <li>Regulations or explanatory document should adequately describe what 'as soon as practicable' means, including the processes or limiting factors that impact delivery times (less preferable).</li> </ul>	<p><b>Recommendation 9.</b></p> <p><b>To address lack of specific timelines, Regulations should be amended in one of two ways:</b></p> <p>(a) By including specific timelines, deadlines or time periods (preferable); or</p> <p>(b) By providing in the Regulations or explanatory document what is meant by 'as soon as practicable,' including the processes or limiting factors that impact delivery times (less preferable).</p>
<p>Where Regulations specify delivery date for NT EPA or government decisions or other milestones in EIA and approvals processes, penalties or other consequences to mitigate negative impacts on the proponent should be specified (e.g. cancellation of cost-recovery fees) or decisions in favour of the proponent should be deemed to have been made.</p>	<p>39(3) Additional information about referral (a direction must be given within 10 business days after the NT EPA receives the referral, and other Regulations stating the number of business days associated with NT EPA or government decisions or milestones, including</p> <p>43(1), 44(2), 56(3), 57(2), 66(4), 67(1), 67(3), 70(2), 71(3), 83(2), 85(3), 92(3), 95(3), 101(2), 107, 110(3)(a)(b), 116, 119(2), 135(3), 160(2)(a)-(e), 163(3), 186(3) &amp; (4), 202(3) and 203(4)</p>	<p>The Regulations have a number of penalties specified against proponents failing to meet stated deadlines. Despite this, regulators have little accountability for failing to meet their deadlines for decisions and delivery of other outputs that may comprise a material adverse impact on proponents and their proposals.</p>	<p>Accountability is needed where regulations specify delivery date for NT EPA or government decisions or other milestones in EIA and approvals processes to mitigate negative impacts on the proponent should be specified (e.g. cancellation of cost-recovery fees) or decisions in favour of the proponent should be deemed to have been made.</p>	<p><b>Recommendation 14.</b></p> <p>Accountability is needed where regulations specify delivery date for NT EPA or government decisions or other milestones in EIA and approvals processes to mitigate negative impacts on the proponent should be specified (e.g. cancellation of cost-recovery fees) or decisions in favour of the proponent should be deemed to have been made.</p>
<p>It is unclear why a number of consultation processes (primarily time allotted for submission periods) specify 30 business days for an accepted proponent-initiated EIS referral and only 15 business days for other referrals.</p>	<p>51(2) (a) &amp; (b) Public consultation on referrals accepted by the NT EPA.</p> <p>Public consultation (if a notice of significant variation is accepted)</p> <p>169(2)(a)&amp;(b)</p> <p>199(2)(a)&amp;(b)</p> <p>221(2)(a)&amp;(b)</p>	<p>There is no reason for the submission periods to differ, and the shorter timeframe for both would result in more timely EIA processes.</p> <p>There is no reason for the submission periods to differ, and the shorter timeframe for both would result in more timely EIA processes.</p>	<p>Public consultation on the NT EPA's acceptance of a referral should include a period of 15 business days, regardless of the source of the referral.</p> <p>Public consultation on the NT EPA's acceptance of a referral should include a period of 15 business days, regardless of the source of the referral.</p>	<p><b>Recommendation 13(b).</b></p> <p><b>Public consultation on the NT EPA's acceptance of a referral should include a period of 15 business days, regardless of the source of the referral.</b></p>
<p>Many regulations indicate that NT EPA consultation with proponents or consent authorities is optional when in all cases this should be mandatory ('must' rather than 'may')</p>	<p>106(1) (a) Consultation with proponent. Before publishing draft Tor, the NT EPA 'may' consult with the proponent</p> <p>159(1) (b) Consultation after an assessment report and recommendation to the minister, regarding EA, have been prepared. The NT EPA 'may' give a copy of the draft statement of unacceptable impact (if any) to the proponent; and</p> <p>159(2) The NT EPA 'must make reasonable efforts' to obtain the views of the following in relation to a draft EA or draft statement of unacceptable impact, including any statutory decision-maker that the NT EPA considers may have a view on the draft EA or draft Statement.</p> <p>The 'must' vs 'may' issue also occurs in the following Regulations:</p> <p>177(2), 182(1) (a), 203(3), 209(2) (b) and 229(2) (b).</p>	<p>Because ToR is critically important in fixing the scope of an EIA, the NT EPA should not have the option to avoid consulting with the proponent.</p> <ul style="list-style-type: none"> <li>NT EPA should not have the option to avoid consulting with the proponent; and</li> <li>Current wording 'must make reasonable efforts' is not strong enough: the NT EPA must obtain the views of any statutory decision-maker that the NT EPA considers may have a view on the draft EA</li> </ul>	<p>The regulation should be amended to mandate that the NT EPA <b>must consult with the proponent</b> prior to publishing the draft ToR</p> <p>Wording for both regulations should be amended to indicate that the NT EPA <b>must give a copy of these documents to the proponent and must obtain the views of any statutory decision-maker that the NT EPA considers may have a view on the draft EA</b></p>	<p><b>Recommendation 10(g).</b></p> <p><b>Wording for regulations should be amended to indicate that the NT EPA must give a copy of these documents to the proponent and must obtain the views of any statutory decision-maker that the NT EPA considers may have a view on the draft EA.</b></p>

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations	
<b>Concerns with regulations and provisions that occur in different contexts throughout the draft Regulations (Cont'd)</b>					
<p>Consultation between the NT EPA and proponents, government agencies and the public must be <i>bona fide</i>: it must consider feedback and there must be both a real opportunity for stakeholder feedback to amend ToR, draft decisions, etc., and a genuine willingness on the part of the NT EPA to make amendments identified through consultation.</p>	n/a	n/a	<p>Consultation between the NT EPA and proponents, government agencies and the public must be <i>bona fide</i>: it must consider feedback and there must be both a real opportunity for stakeholder feedback to amend ToR, draft decisions, etc., and a genuine willingness on the part of the NT EPA to make amendments identified through consultation.</p>		
<p>A number of terms need definition (or better definition)</p>	<p>163(2)(a) and 192(2)(a) Additional information about significant variation must be a <u>material omission</u> from the notice</p> <p>211(2)(a) Additional information about referral (of significant variation) must be a <u>material omission</u> from the referral</p>	<p>The Regulations must adequately define what a 'material omission' is.</p>	<p>The Regulations must adequately define what a 'material omission' is.</p>	<p><b>Recommendation 19.</b></p> <p>The Regulations must adequately define the following terms within the context of potential for significant environmental impact:</p>	
	<p>'Material,' as in material omission and material difference</p>	<p>171(2) (a), 201(2) (a) and 223(2) (a) Matters NT EPA must consider in relation to significant variation, in assessing a significant variation to determine whether or not a proposed action required additional EIA or a different method of EIA from the existing EIA process, the NT EPA must consider whether the potential for a significant impact on the environment 'differs in a material way' from impacts already identified in the assessment process for the proposed action.</p>	<p>The Regulations must adequately define what a 'material difference' is and may include concepts such as significance, pertinence and what is real or tangible.</p>	<p>The Regulations must adequately define what a 'material difference' is.</p>	<ul style="list-style-type: none"> <li>• Material omission</li> <li>• Material difference</li> <li>• Output</li> <li>• Protected environmental area</li> </ul> <p>Preferably with at least one example to illustrate.</p>
	<p>What is meant by 'output' in relation to statements about 'type or amount of any output' of the proposed action in a way that significant changes the potential significant impacts from those already identified in the assessment process?</p>	<p>171(2)(b), 201(2)(b) and 223(2)(b)Matters NT EPA must consider in relation to significant variation, in assessing a significant variation to determine whether or not a proposed action required additional EIA or a different method of EIA from the existing EIA process, the NT EPA must consider whether, and the extent to which, the significant variation will result in a substantial change to the 'type or amount of any output of the proposed action' in a way that significantly changes the potential significant impacts from those already identified in the assessment process for the proposed action.</p>	<p>The Regulations must adequately define what is meant by 'output' in this context. The MCA NT acknowledges that the definition will have to cater for any type of project proposal, not just mining development. For this reason, the definition should include at least two very different types of projects.</p>	<p>The Regulations must adequately define what is meant by 'output' in this context</p>	
	<p>'Protected environmental area'</p>	<p>Subdivision 2. Process for declaring protected environmental area.</p>	<p>Although this term is included in the definitions of the Environment Protection Act, the definition merely indicates that such areas are those that are declared to be a protected environmental area (i.e. a tautology)</p>	<p>The regulations should include a <i>bona fide</i> definition of 'protected environmental area.'</p>	

Issue	Relevant regulation(s)	Industry objection	Alternatives	Recommendations
<b>Other concerns</b>				
<p>If the NT EPA recommends the Minister not grant an EA for a proposed project and the Minister does not make a decision within the required time, the Minister is taken to have decided to refuse to grant an EA, and this is unacceptable</p>	<p>67(4) Time for making decision (on referral)</p>	<p>If a Minister refuses to grant an EA, the proposed project cannot proceed. Because of the finality of this result, the MCA NT considers it unacceptable that a project can be halted if a Minister does not make a decision by a deadline. Instead, a fairer and sounder alternative would be to refer the decision to the Administrator, which would then likely result in the decision being by Cabinet. A decision by Cabinet would ensure that this critically important decision would be made in a more considered manner.</p>	<p>If a Minister does not make a decision on whether or not to accept the NT EPA's recommendation to NOT grant an EA, the decision should instead go to the Administrator.</p>	<p><b>Recommendation 5.</b> If a Minister does not make a decision on whether or not to accept the NT EPA's recommendation to NOT grant an EA, the decision must instead go to the Administrator.</p>
<p>More information is needed about EIA by Inquiry (Level 4)</p>	<p>Part 5 EIA. Division 7. Assessment by Inquiry</p>	<ul style="list-style-type: none"> <li>Other than indicating that the NT EPA must determine and publish the procedure for an inquiry, which might be determined by a panel; the NT EPA may appoint a panel to assist with an inquiry and that all members must be suitably qualified and experienced; an inquiry panel can collect information via public hearing and information might restrict publication of evidence, it is not clear if this level of EIA can be done independently or only in conjunction with another EIA pathway.</li> <li>The only additional information provided in plain-English explanatory documents is that 'Assessment by inquiry is for high risk actions where traditional paper-based approaches may not provide the necessary level of consultation or confidence.' Examples should be provided to illustrate this.</li> </ul>	<ul style="list-style-type: none"> <li>More information needs to be included with the Regulations about the structure and function of an EIA by Inquiry, including as an addition to the Proposed EIA and Approval timelines figure to illustrate process and timings and to make explicit that if certain matters of an EIA are to be considered by inquiry while others are considered by referral, SER or EIS, how these pathways intersect and the relationship between environmental assessment reports prepared at the end of the main EIA process and the Inquiry process.</li> </ul>	<p><b>Recommendation 22.</b> The following information should be included with the Regulations:</p> <ul style="list-style-type: none"> <li>The structure and function of an EIA by Inquiry, including as an addition to the Proposed EIA and Approval timelines figure to illustrate process and timings and to make explicit that if certain matters of an EIA are to be considered by inquiry while others are considered by referral, SER or EIS,</li> <li>How these pathways intersect</li> <li>The relationship between environmental assessment reports prepared at the end of the main EIA process and the Inquiry process.</li> </ul>
<b>Other comments</b>				
<p>Regarding the NT EPA's Power to obtain advice, and Direction to proponent to obtain independent review, consultants should be engaged and paid by the NT EPA or government.</p>	<p>81(2) and 82. Power to obtain advice and Direction to proponent to obtain independent review</p>	<p>To require a proponent to obtain an 'independent review' when it is likely that the expertise already obtained by the proponent would have been provided by such an independent reviewer is an unworkable proposition.</p>	<p>If the NT EPA or government requires an independent review, it should be the government's responsibility to source and fund this review.</p>	<p><b>Recommendation 20.</b> If the NT EPA or government requires an independent review, the NT EPA or government must source and fund this review.</p>
<p>Before recommending an EIA method that is or includes an assessment by inquiry, not only should the NT EPA consult with the Minister and proponent, but also the consent authority</p>	<p>59 Consultation on assessment by inquiry</p>			<p><b>Recommendation 21.</b> Before recommending an EIA method that is or includes an assessment by inquiry, the NT EPA should consult with the Minister, the proponent and the consent authority.</p>
<p>Typographical error/incorrect reference: 'significant variation' not 'strategic variation'</p>	<p>167(2) (a) Notice to proponent of decision. The notice of decision must contain the following information: a statement that the notice of 'strategic' variation has been accepted or refused.</p>		<p>The word 'strategic' should be replaced by 'significant,' i.e. 'significant variation.'</p>	

## MINERALS COUNCIL OF AUSTRALIA NORTHERN TERRITORY DIVISION

## SUMMARY OF RECOMMENDATIONS FOR NT DRAFT ENVIRONMENT PROTECTION REGULATIONS 2019

#	Recommendations	Relevant Regulations
1	If the NT EPA re-assesses the level of environmental risk after the assessment is well-underway, the EPA should instead seek the additional information it needs to adequately assess the newly-discovered risk.	<ul style="list-style-type: none"> <li>• 90 NT EPA may reconsider method of assessment</li> <li>• 92 Decision on method of assessment</li> </ul>
2	Regulations 113(1)(a) and (b) must include more specific definitions for the kind of new information that would empower the NT EPA to amend ToR; why the NT EPA would not have been aware of this information; and what is meant by 'change in circumstance relating to the environment.'	113 (1)(a) and (b) describing circumstances that would authorise the NT EPA to amend approved ToR during an EIA
3	For every request for additional information, the NT EPA must demonstrate why this information is essential for the NT EPA to adequately assess a referred project.  Proponents should be provided the opportunity to contest the request if considered unreasonable.	<ul style="list-style-type: none"> <li>• 77 (1)-(4) Additional information during assessment process</li> <li>• 78 Publication of direction and information</li> <li>• 79 Public consultation</li> </ul>
4	If a project is required to be assessed under both the <i>NT Environment Protection Act</i> and the EPBC Act, then the NT EIA process should continue in accordance with NT regulatory timelines while the Commonwealth EIA process is initiated and progresses, such that both EIA processes are concurrent.	83 Suspension of assessment process – referral to Commonwealth
5	If a Minister does not make a decision on whether or not to accept the NT EPA's recommendation to NOT grant an EA, the decision must instead go to the Administrator.	67(4) Time for making decision (on referral)
6	'Early refusal' provisions should be removed from the Regulations: a proposed project should not be subject to rejection unless it has been assessed at minimum on the basis of Referral Information (L1 EIA)	<ul style="list-style-type: none"> <li>• 56 (2)(d) Decision on accepted referral other than proponent-initiated EIS referral</li> <li>• 57(1)(e) Decision on proponent-initiated EIS referral</li> <li>• 61 Consultation on proposed recommendation to refuse environmental approval</li> <li>• 64 Minister's decision on recommendation</li> <li>• 66 Show cause process</li> <li>• 67 Time for making decision</li> <li>• 68 Statement of reasons</li> <li>• 69 Notice of decision</li> </ul>

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7	<p>(a) Any fees to be charged to proponents for EIA processes must be in published fee schedules and capped at a reasonable level.</p> <p>(b) Proponents should be charged for the NT EPA to engage consultants only if aspects of a project are particularly unusual or largely unknown.</p> <p>(c) The cost to convene a panel of inquiry must be done at the expense of the government, unless the panel has been convened to review or oversee aspects of an EIA that are particularly unusual or unknown, requiring engagement of experts on those matters.</p>	241 Recovery of costs
8	<p>(a) Unspent funds must be returned to the proponent if an EIA process is terminated.</p> <p>(b) At the time an EIA process is cancelled, any outstanding fees and charges must also be cancelled.</p> <p>(c) The regulations must include an appeals process for proponents who believe they are being asked to pay fees for services that are the core business of the NT EPA or government or are excessive.</p>	242 Fees and charges not refunded
9	<p>To address lack of specific timelines, Regulations should be amended in one of two ways:</p> <ol style="list-style-type: none"> <li>1. By including specific timelines, deadlines or time periods (preferable); or</li> <li>2. By providing in the Regulations or explanatory document what is meant by 'as soon as practicable,' including the processes or limiting factors that impact delivery times (less preferable).</li> </ol>	<p>61(1)(b) NT EPA must consider any written submission (on an accepted referral)</p> <p>63(2) &amp; (3) Notice of decision (Decision on accepted referral, including proponent-initiated EIS referral)</p> <p>65(b) The Minister must consider any written comments.. 'within the time specified in writing by the Minister'</p> <p>69(2)-(4) The Minister must give notice of a decision on formal assessment of a proposal, including level of assessment</p> <p>111 Approved ToR must be given to proponent</p> <p>113(2) Amendment of approved ToR (if NT EPA proposes to amend approved ToR, he NT EPA must advise the proponent)</p> <p>167(4) Notice of decision to not accept a notice of significant variation</p>

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10	Regulation 115 (1) must be amended to require the NT EPA to consult with the proponent prior to publishing draft amending ToR, and the time period during which the NT EPA must consider any written submission from the proponent must be specified in the regulation.	115 (1)(a) and (b) describing NT EPA requirements to consult with proponents prior to amending ToR
10 (a)	As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore, the term 'may' under 106(1) (a) should be changed to 'shall.'	106(1)(a) Consultation with proponent
10 (b)	As ToR set the all-important scope for an EIA process, it is essential that the NT EPA consult with the proponent; therefore, the term 'may' under 115(1) (a) should be changed to 'shall.'	115(1)(a) Consultation with proponent
10 (c)	If the NT EPA concludes, in its environmental assessment report, that a project cannot proceed without unacceptable environmental impacts, then the NT EPA should be required to provide a copy of its draft statement to the proponent.	159(1)(b) Consultation (for Environmental Assessment Report)
10 (d)	Before publishing draft amending ToR under regulation 183, the NT EPA must consult with the proponent	182(1)(a) Consultation with proponent
10 (e)	Before making a decision on the need to subject the proposed variation to a new EIA process, the NT EPA must consult with the proponent.	203(3) Decision if statement of unacceptable impact prepared
10 (f)	The NT EPA must obtain the views of the statutory decision-maker in consultation with the consent authority when drafting amended EAs.	232(2)(b)(i) Consultation on draft amended environmental approval
10 (g)	Wording for regulations should be amended to indicate that the NT EPA must give a copy of these documents to the proponent and must obtain the views of any statutory decision-maker that the NT EPA considers may have a view on the draft EA.	<p>159(1)(b) Consultation after an assessment report and recommendation to the minister, regarding EA, have been prepared. The NT EPA 'may' give a copy of the draft statement of unacceptable impact (if any) to the proponent; and</p> <p>159(2) The NT EPA 'must make reasonable efforts' to obtain the views of the following in relation to a draft EA or draft statement of unacceptable impact, including any statutory decision-maker that the NT EPA considers may have a view on the draft EA or draft Statement.</p> <p>The 'must' vs 'may' issue also occurs in the following Regulations:</p> <p>177(2), 182(1)(a), 203(3), 209(2)(b) and 229(2)(b).</p>

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11	<p>(a) If expert advice is sought by the NT EPA, then the EIA process must not be halted while this advice is being sought, unless the matter is the final one to be considered in the EIA and all other aspects have already been dealt with in the proponent's EIA documentation.</p> <p>(b) In this latter case, the NT EPA should be able to 'stop the clock' until the expert information is obtained, considered by the proponent and integrated into the proponent's EIA documentation.</p>	85 Suspension of assessment process if advice sought or requested
12	Because this regulation has multiple sub-regulations, with each sub-regulation describing alternative EIA pathways should the NT EPA accept a notice of significant variation from the proponent. Flowcharts should be developed to illustrate these alternatives.	172(1) – (6) Decision on significant variation
13	Should NT EPA amend a proponent's ToR when its EIA process is well-underway, then any amendment(s) must address only the newly-recognised environmental risk(s).	Subdivision 2. Amendment of ToR 113-122
13 (a)	Unless the significant variation has consequences across a broad range of potentially significant environmental impacts, the NT EPA should be authorised only to amend ToR or prepare an addendum to the original ToR, with both of these options limited to addressing new or expanded potentially significant environmental impacts.	181(1) Preparation of amending ToR
13 (b)	Public consultation on the NT EPA's acceptance of a referral should include a period of 15 business days, regardless of the source of the referral.	Public consultation (if a notice of significant variation is accepted) 169(2)(a)&(b) 199(2)(a)&(b) 221(2)(a)&(b)
14	Accountability is needed where regulations specify delivery date for NT EPA or government decisions or other milestones in EIA and approvals processes to mitigate negative impacts on the proponent should be specified (e.g. cancellation of cost-recovery fees) or decisions in favour of the proponent should be deemed to have been made.	39(3) Additional information about referral (a direction must be given within 10 business days after the NT EPA receives the referral, and other Regulations stating the number of business days associated with NT EPA or government decisions or milestones, including 43(1), 44(2), 56(3), 57(2), 66(4), 67(1), 67(3), 70(2), 71(3), 83(2), 85(3), 92(3), 95(3), 101(2), 107, 110(3)(a)(b), 116, 119(2), 135(3), 160(2)(a)-(e), 163(3), 186(3) & (4), 202(3) and 203(4)



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15	<p>(a) The different provisions of regulation 172 that address implications of each EIA level must include an option for the proponent to provide additional information to satisfactorily address the information needs of the NT EPA to assess potential impacts associated with the variation.</p> <p>(b) Any amendments to the ToR must first be discussed and negotiated with the proponent to decide what is required to adequately address the altered environmental risks associated with the variation. Amendments must be restricted to addressing only those matters altered by the proposed variation.</p> <p>(c) Before the NT EPA terminates the entire EIA process ('assessment no longer required'), it must consult with the proponent to explore other alternatives.</p> <p>(d) The wording of these provisions must be more explicit, i.e. rather than 'assessment is no longer required,' the regulation should state that the NT EPA may decide to terminate an EIA if the potentially significant environmental impacts of the variation cannot be adequately addressed by the current EIA process.</p>	<p>172 Decision on significant variation</p> <p>179 Assessment no longer required</p>
16	<p>An additional provision should be included under 91(2) requiring the NT EPA to justify ('show cause') why it believes that the current EIA cannot provide adequate information upon which it can satisfactorily complete its assessment, before requiring the proponent to show cause why the method of EIA should not be changed.</p>	<p>91 Show cause process (for regulation 92, Decision on method of assessment)</p>
17	<p>Imposition by the NT EPA of a time limit to deliver EIA documentation (SER, draft EIS or Supplement to the draft EIS) must include bona fide consultation with the proponent and negotiation of a mutually-acceptable time limit.</p>	<p>96 Submission period for an SER</p> <p>105 Submission period for an EIS</p> <p>125 Submission period for an EIS</p> <p>136 Submission period for Supplement to draft EIS</p>
18	<p>Matters to be considered by the NT EPA in setting the EIA level and period during which EIA documentation must be delivered to the NT EPA, must be limited to those with real and demonstrable relevance to the potentially significant environmental impacts of the proposal.</p>	<p>105(3)(e) In determining the assessment period, the NT EPA must consider any other matter it considers relevant.</p>

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9	<p>The Regulations must adequately define the following terms within the context of potential for significant environmental impact:</p> <ul style="list-style-type: none"> <li>• Material omission</li> <li>• Material difference</li> <li>• Output</li> <li>• Protected environmental area</li> </ul> <p>Preferably with at least one example to illustrate.</p>	<p>163(2)(a) and 192(2)(a) Additional information about significant variation must be a <u>material omission</u> from the notice</p> <p>211(2)(a) Additional information about referral (of significant variation) must be a <u>material omission</u> from the referral</p> <p>171(2)(a), 201(2)(a) and 223(2)(a) Matters NT EPA must consider in relation to significant variation, in assessing a significant variation to determine whether or not a proposed action required additional EIA or a different method of EIA from the existing EIA process, the NT EPA must consider whether the potential for a significant impact on the environment '<u>differs in a material way</u>' from impacts already identified in the assessment process for the proposed action.</p> <p>171(2)(b), 201(2)(b) and 223(2)(b) Matters NT EPA must consider in relation to significant variation, in assessing a significant variation to determine whether or not a proposed action required additional EIA or a different method of EIA from the existing EIA process, the NT EPA must consider whether, and the extent to which, the significant variation will result in a substantial change to the 'type or amount of any output of the proposed action' in a way that significantly changes the potential significant impacts from those already identified in the assessment process for the proposed action.</p> <p>Subdivision 2. Process for declaring protected environmental area.</p>
20	<p>If the NT EPA or government requires an independent review, the NT EPA or government must source and fund this review.</p>	<p>59 Consultation on assessment by inquiry</p>
21	<p>Before recommending an EIA method that is or includes an assessment by inquiry, the NT EPA should consult with the Minister, the proponent and the consent authority.</p>	<p>59 Consultation on assessment by inquiry</p>

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<b>22(a)</b>	Suspension of EIA and approvals processes, merely on the basis of a proponent not having paid fees, is unreasonable and Regulation 241 (3) and (4) should be removed from the Regulations.	<p>39(4) Additional information about referral</p> <p>83 Suspension of assessment process – referral to Commonwealth</p> <p>85 Suspension of assessment process if advice sought or requested</p> <p>241(3) &amp; (4) Suspension of an EIA process until proponent pays fees and other charges for government cost-recovery</p>
<b>23</b>	Before the NT EPA refuses to grant an extension for delivery by a proponent of EIA documents, the NT EPA must consult with the proponent and must provide a compelling, risk-based reason for its decision.	<p>97 (2)(b) Extension of period to submit an SER</p> <p>126 (2)(c) Extension of period to submit a draft EIS</p> <p>137 (2)(b) Extension of period to submit a Supplement</p>