

May 15, 2019

Mr. Cory Vanthuyne, Chair
Standing Committee on Economic Development and Environment
Northwest Territories Legislative Assembly
Yellowknife, NWT

Attn: Mr. Michael Ball, Committee Clerk

Comments on Bill 34 Mineral Resources Act
Submitted by Ecology North, Alternatives North, and Canadian Parks and
Wilderness Society NWT Chapter

Summary of Recommended Changes

1. **Add** non-discretionary language that makes explicit reference to important points from plain language materials, enabling them to be set in the regulations (referenced individually below)
2. **Add** “ecological sustainability and intergenerational equity” to the Purpose
3. **Enable** the registry in Section 7 to be set up using an accessible online platform so that documents and notices can easily be made public
4. **Add** “the capturing of environmental baseline information” to the definition of work
5. **Recommendations** to make the Mining Rights Panel more inclusive and transparent for the purpose of increasing legitimacy and perception of legitimacy
6. **Recognize** the interests of community governments as a separate set of interests from IGOs and the public
7. **Clarify** the criteria for restricted areas designation
8. **Require** the minister to publish a written notice of restricted area designation within a specified time-frame
9. **Recommendation** to temporarily freeze restricted areas within 36 hours after receiving the request for designation in order to ensure that mineral interests do not claim the area before the designation comes into force
10. **Enable** regulations to be set for designating restricted areas where there are already mineral interests
11. **Clarify** the pathway for restricted zone requests to be made to the Minister, including requests by community governments
12. **Delete** the clause permitting lower regulatory requirements in exploration zones
OR
13. **Add** a requirement for meaningful consultation with IGOs and community governments before the establishment of an incentive zone
AND
14. **Clarify** the meaning of “requirements that are more favourable”
15. **Clarify** who can request an exploration zone
16. **Enable** regulations to set training requirements for cultural awareness for prospector’s licenses
17. **Add** Ministerial discretion to refuse the issuance of a prospector’s licence
18. **Clarify** when and how the Mining Recorder is required to publish the notice of an application to record a claim

19. **Recognize** the right of community governments to meaningful consultation before a claim is staked within municipal boundaries, in addition to other points regarding community government rights
 20. **Add** Ministerial discretion to refuse the issuance of a mineral lease
 21. **Clarify** the “prescribed requirements” for issuing a mineral lease
 22. **Clarify** what “prescribed circumstances” would waive the requirement to give a notice of intended work
 23. **Clarify** the threshold for work that would trigger the requirement to give notice of intended work
 24. **Require** notice of intended work to be sent to community governments in addition to IGOs
 25. **Add** Ministerial discretion to refuse the issuance of a production licence
 26. **Clarify** the extent to which geological information from collected drill cores will be made public
 27. **Add** list of possible targets for benefits agreements with the people of the NWT
 28. **Add** mechanism for tracking whether all aspects of the benefits agreements are met
 29. **Request** that SCEDE listen to the recommendations of IGO’s and communities on Section 52
 30. **Request** to be included in future discussions of royalty rates and that this be a public review
 31. **Recommendation** to include EITI standards for royalty transparency instead of ESTMA
 32. **Replace** “may” with “shall” in reference to the minister disclosing applicable information from statistical returns
 33. **Delete** the 15-year waiting period for disclosure of information in a statistical return
 34. **Add** the possibility of imprisonment to the list of fines in Part 10
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Dear Sir,

This submission is made on behalf of:

- Ecology North
- Alternatives North
- CPAWS-NWT

We would like to begin our comments on this Bill by acknowledging the improvements that have been made towards reforming the free entry system and establishing better relationships with Indigenous organizations from the beginning of the prospecting process through to mine development. These are important improvements and they are good to see in the Bill. For example:

The Purpose includes:

(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

and

The definition of “work” now includes the cost of Indigenous engagement

and

(2) The recording of a claim under this Act does not confer upon the holder
(a) any right, title, interest or claim other than the exclusive right to recognition of the performance of work required in order to obtain a mineral lease and until obtaining such a lease the holder is merely a licensee of the Government of the Northwest Territories;

and

22 (2) the Minister may...designate in writing an area of the Northwest Territories as a

restricted area within which interests in minerals may not be issued for a period of up to one year,

and

It is good to see that the Minister can take possession of drill cores from an abandoned project (mineral lease or claim) at his discretion (Section 50). This is an important source of geological knowledge, and could enable consistent collection and recording of physical data while avoiding duplication of environmental disturbances in collecting data.

While it is good to see the above improvements, the *Mineral Resources Act* in its current version is lacking specificity which has the effect of compromising its rigor in the areas of transparency and accountability. Adding certainty of timelines, process, and cost will be to the benefit of all parties. Our general comments on Bill 34 have been designed to facilitate their integration into the Bill by the Standing Committee of Economic Development and Environment, with sample wording provided where applicable. We believe that all of the recommendations we have outlined below are of significant importance, with the reason or reasons being stated in the “broad concern” designation.

General Comments on Bill 34

1. **Regulations:** we understand that this is an enabling piece of legislation. However, a great many of the intended advancements that were celebrated in the plain language materials have either been left to the regulations or to the discretion of the Minister, or both. These include:
 - Training requirements for prospector’s licences,
 - Benefits agreements for the people of the NWT,
 - Online map staking,
 - The submission of geological information in annual reports,
 - The designation of exploration and restricted zones, and
 - Details on notifications and confidentiality.

It would be good to see, at minimum, sections or subsections in the Bill that make reference to each of the above points explicitly and using non-discretionary language. Even if it is only to enable the details to be set in the regulations. At present there are many pages of regulations on mining activities as contained in the current *Mining Regulations* and we would like to see some of that detail, which has been agreed upon to the extent that it is currently the law, brought into this Bill. Increasing the clarity and predictability of the MRAs regulatory processes in this way would be a positive change for all parties involved.

We ask that the Act include language establishing that “the Minister shall consult with IGOs, community governments, the Intergovernmental Council, the minerals industry, and the public in the development of these regulations.”

As a voice for the residents and the environment of the NWT, the co-signers of this written submission ask to be included as a stakeholder in the development of these regulations.

2. **Purpose:** Section 2 of the Bill elaborates on its intended purpose. In order for this *Mineral Resources Act* to serve as a responsible framework for regulating mineral resources, and to ensure that the NWT makes the best use of these non-renewable resources, we recommend including in the list of goals a point that recognizes the importance of ecological sustainability and intergenerational equity. Recognizing these principles in addition to the ones that are already included is critical for ensuring a truly responsible mining industry. They are important to include as well for allowing space in this Bill for other economies to thrive alongside the mineral resource

economy. Including ecological sustainability and intergenerational equity in the purpose will serve to lay the groundwork for creating a more resilient mining industry through such economic diversification. **Broad concern: Environment, economic diversification**

2. (j) to recognize the importance of ecological sustainability and intergenerational equity.

3. **Registry:** Section 7 requires the Mining Recorder to maintain a registry of all information required to be recorded by the Mining Recorder under this Bill and the regulations. This sets the stage for additional transparency measures to be put into place within the terms of this act, further to the ones that are already there. For example, in Quebec the mining titles issued under the *Mining Act* are made available for public viewing through the Public Register of Real and Immovable Mining Rights. If the registry set up in Section 7 was created using an accessible online platform, like a website, then it would be an opportunity for increased transparency and public trust. This is consistent with GNWT Open Government Policy. We recommend especially that the following items be made available to the general public through such a registry.

- The issuance of an interest in minerals to any person or company under Section 18
- The Minister's written designation of any restricted zone under Section 22*
- The Minister's written designation of any incentivized zone under Section 24*
- The issuance of a prospector's licence by the Mining Recorder to any person or company under Section 26
- Any application that the Mining Recorder has received to record a claim
 - A notice of this must be sent out to applicable IGO's but we ask that this be extended to include the general public as an appropriate notice, for transparency and accountability purposes
- The issuance of a mineral lease under Section 37
- Any notice of intended work received by the office of the Mining Recorder
- The issuance of a production licence

*This information is not submitted to the Mining Recorder in the current version of the Act, so the process for transferring information would need to be created and described

Proposed language for the inclusion of these points in the Act could take for example Section 28 (5), altering it to include IGOs *and* community governments *and* the public. **Broad concern: Transparency**

4. **Definition of work:** The definition of "work" in subsection (c)(iii) of Part 1 of the Act, now includes the cost of Indigenous engagement, which is positive. However, the definition now excludes any mention of environmental baseline studies. At no point in the stakeholder meetings was there any discussion of deleting environmental baseline studies from the definition of "work". Discussions centred on how to best capture baseline information so that it could effectively be used throughout the process to mining and reclamation. It is hugely important that this work still be considered "work" in the terms of the Act to continue to encourage companies to collect such information early in the process. The following subsection should be reinserted as subsection 1. (c)(iv). **Broad concern: Environment**

1. (c)(iv) the capturing of environmental baseline information,

5. **Mining Rights Panel:** The eligibility for a Mining Rights Panel is set out in 10 (3). Members are appointed by the Minister and are to have expert knowledge of law, royalty administration, mineral resources and their administration. In response to this level of Ministerial discretion, we

have three recommendations that would serve to increase the Panel's legitimacy in the eyes of the public:

1. The Panel should include members who have knowledge in the area of cultural competency. To this end, we recommend the list of required areas of knowledge should include expert knowledge of the co-management system and Indigenous government rights. This is particularly important as the Rights Panel is appointed by the Minister, and the Minister is promoting mining: this is a small step to reducing conflict of interest in this context.

10. (3)(b)(v) the co-management system,
(vi) Indigenous government rights.

2. To go further in improving the structure of this Panel in order to minimize land use conflicts, we recommend that this section clearly define the number of appointments that come from each of the potential knowledge areas in section (3)(b).
3. The term limits for members appointed to the Mining Rights Panel should be clearly defined. Given the increasingly sensitive environment in which similar organizations operate, it is advisable to remove as many opportunities for political interference in the functioning of the Panel as possible. GNWT seems to have typical terms of three years, with one to two possible renewals. We suggest a three-year term with one term renewals for the Panel's term limit.

Broad concern: Transparency

6. **Community governments:** A new section is required to address the interests of community governments. An item that came up several times in the stakeholder meetings was lack of input for community governments. Community governments should be allowed to create no-go zones within their municipal boundaries where staking is not allowed. The current version of the Act seems to bet on current Land Use Plans (LUPs) to protect the sensitive areas that might be designated as no-go zones. There are two problems with this:

- a) the current LUPs (under *the Mackenzie Valley Resource Management Act*) have no jurisdiction within municipal boundaries, and
- b) not all regions have LUPs.

Even if there is no prohibition, community governments should be notified of claim staking and work on mineral leases within their boundaries or directly adjacent to such boundaries or in areas of key municipal infrastructure (e.g., potable water supply). This would be a significant step towards avoiding land use conflicts. We recommend improvements to this Act with respect to community governments in sections #9, #13, #14, #18, and #23. **Broad concern: Accountability**

Temporarily Restricted Areas

Section-specific comments:

7. 22. (2) — The criteria for an area to be designated as restricted are not laid out in enough detail. In the current version of the Act, the area has to be identified as potentially having unique significance that reasonably justifies a restriction, but the standards for reasonableness are left up to the Minister. As long as this Act is administered by the Department of Industry, Tourism, and Investment, that Minister will also be responsible for promoting mining in the NWT. If the criteria for restricted areas are not standardized in legislation, the possibility remains for conflict of interest to interfere in the designation process. We recommend using the same or all of the following standards as a guide for integrating more specific language on “reasonable

significance” into the next of the Act. The introduction of clearly defined standards for restricted areas would eliminate the need for discretionary language in this section. We suggest that cultural and traditional values be prioritized. **Broad concern: Ministerial discretion**

22. (2) Subject to this section and the regulations, the Minister **shall**, on the Minister’s own initiative or as requested in accordance with this section, designate in writing an area of the Northwest Territories as a restricted area within which interests in minerals may not be issued for a period of up to one year, if

- a) The Minister considers that the designation is required urgently and for a temporary period; and
- b) the area has been identified as potentially having significance as a result of
 - i. unique biodiversity, geodiversity, or environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities;
 - ii. the interaction of people and nature over time having produced a distinct character with significant ecological, biological, cultural or scenic value;
 - iii. associated cultural values and traditional natural resource management systems;
 - iv. a specific natural monument within the boundaries of the area, which can be a landform, sea mount, marine cavern, geological feature such as a cave, or a living feature such as an ancient grove;
 - v. unique characteristics which may be relevant to the well-being of particular species or habitats, where management reflects this priority;
- a) covers the minimal area necessary to preserve the unique attributes **under subsection (b)** and
- b) is no larger than the prescribed size.

8. If the above wording changes are not incorporated into the act, we recommend that a subsection be added to section 22 requiring the Minister publish a written notice of the factors taken into account during the process of designating, or choosing not to designate, an area as restricted. This notice should be made public within a reasonable period of time after receiving the designation request. Proposed language for this subsection is as follows:

22. (x) The Minister shall, in accordance with the regulations, make public the full text of any written decision in respect of the designation of an area as restricted

- a) which includes
 - i. the factors taken into account during the decision-making process;
 - ii. any other requirements as set out in the regulations; and
- b) is published within ____ days of receiving the designation request.

9. 22. (3)(b) — The Minister must engage with all applicable Indigenous governments and organizations before designating a restricted area. There are two potential problems that could arise from the lack of clarity in this subsection.
 1. The definition of engagement is not clear. Assurance of a structured consultation process with all applicable stakeholders would be preferable as it would ensure transparency and accountability. This can be achieved by replacing “engage” with “consult” in the text of the Act and including “Indigenous government or organization *or community* **government**” **Broad concern: Accountability**
 2. While consultation is a key facet of this section, it is counterproductive to its goal if it must be completed before the official designation of an area as restricted. Postponing designation for a significant amount of time after the request is received leaves the door open to any

industry member who become aware of the impending designation to stake a claim in the area under review while the chance remains. An elegant solution to this loophole can be found in Quebec's Mining Act which set out a process where as soon as the Department receives a formal request, the zone is temporarily frozen within the next 24 to 72 hours for a period of six-months renewable, without a chance for the industry to block the initiative in between. This can be adapted to the context of the NWT. In practice this means the Mining Recorder would be prohibited from registering any claims or leases that fall within or overlap the restricted area, as set out in the application, until a decision has been reached on that application. If the application is not accepted, the Mining Recorder will record the claims in the order that they were received. If it is accepted, the Mining Recorder will not register any claim.

22. (x) The Minister shall give notice to the Mining Recorder that an application for a restricted area has been received no longer than 48 hours after receiving the application.
- a) Upon receiving this notice, the Mining Recorder shall refuse the issue of any mineral lease or mineral claim that falls within or overlaps the restricted area, as set out in the application, until a decision has been reached by the Minister on that application.
 - i. If the application is rejected by the Minister, the Mining Recorder shall register pending claims and licences in the order in which they were received by the Mining Recorder
 - ii. If the application is accepted by the Minister, the Mining Recorder shall not register any lease or claim that falls within or overlaps the restricted area.

In practice, the ability of the Minister to set restricted zones would be more effective if this requirement to review proposals for restricted zones within a reasonable timeframe was added to Section 22. Additionally, we would like to see the addition of a subsection clarifying that the proposals received by the Minister will be confidential until they are reviewed. Language that may be useful for this purpose can be found in Section 16 subsections (2) to (7) of Bill 36 Act to Amend the Petroleum Resources Act. These additions would ensure that the Act accomplishes its intended purpose as stated in the plain language material: “[The ability to temporarily restrict areas] would avoid scenarios where a Mineral Claim or Mineral Lease may be recorded as these issues are worked through, then starting a wider conflict which is not in the interests of anyone involved.” **Broad concern: Effectiveness of the Act**

10. 22. (12) — The ability of the Minister under this Act to designate temporarily restricted areas is only applicable to areas in which no interests in minerals have yet been issued. The goal of this section would be better attained if the section described a structured process for Indigenous governments or organizations to propose to the minister that an area be designated as restricted in which mineral interests have already been issued. This addition would further the goal of the legislation as it is stated in the plain language materials under the “Rationale” for temporarily restricted areas “Sometimes, new information comes up which may be relevant to areas of land within the Northwest Territories which may not have been known before. This measure is designed to respond to that reality, and provide a temporary buffer for the territorial government, Indigenous governments, and other level of government to come to a suitable resolution which provides certainty to all involved.” We recognize that this would necessitate the addition of a new subsection, proposed language follows. **Broad concern: Effectiveness of the Act**

22. (12) An existing mine located entirely or partially in a restricted area under Section 22 shall demonstrate that

- a) The mine was developed prior to the area's official designation; and
- b) Management plans have been developed and are being implemented to ensure that activities during the remaining mine life cycle will not permanently and materially damage the integrity of the cultural values for which the area was designated or recognized.

General comments:

11. In the plain language material, it states that the “Minister might ... be made aware of potential issues which have not yet been resolved in a particular area of land, by departmental employees.” This pathway to designating a restricted area is not in the Act. In order for the intent of this section to be realized, the Minister should be able to receive proposals to designate a restricted area from employees of the Department of Environment and Natural Resources, because these employees have a more relevant knowledge of “ecological significance” of areas in the NWT than employees of the Department of Industry, Tourism, and Investment. This follows what we have suggested for Section 22 (2)(b)(i) of the Act. For this to be a transparent process, and in order to secure public trust, improvements to the reasonableness requirement mentioned above should be given some consideration. **Broad concern: Ministerial discretion**

Exploration Zones

Section-specific comments:

12. 24. (2) — We have serious misgivings about having lower regulatory requirements to incentivize mining, this could lead to a race to the bottom between regions and recommend removing this concept from the Bill entirely by deleting subsection 24. (2)(b). The ability of a company to have exclusive rights should be incentive enough. This section of the Bill also shows a dangerous mixing of the objectives of promoting mining and effectively regulating mining in the public interest. This is likely a reflection of ITI's inherent conflict of interest in managing mineral rights and promotion of mining. We have recommended that the administration of mineral rights be handed over to the Department of Lands. In the absence doing so, we object to the establishment of exploration zones and recommend the deletion of this section.
13. 24. (3)(b) — Exploration zones should be established only with free, prior and informed consent of the affected IGOs *and community governments* and must also conform to approved land use plans. This should be added to the Bill by changing “engages with” in subsection (3)(b) and subsection (7) to “consults with” and by including explicit language to require consultation with community governments in addition to IGOs. We recommend as well including language that recognizes LUPs.
14. 24. (2)(b) — More specificity should be given to the nature of the “more favorable terms” for acquiring Mineral Claims or Mineral Leases that this section provides. If “more favourable terms” must be included, then more specificity needs to be given on the nature of the terms. If it is left vague, then the public is left with the impression that it means lowering standards with respect to acceptable environmental degradation under the terms of the Act. For example: lowering the threshold for environmental disturbance that triggers the need for a prospector's licence. Without these changes and those mentioned in #12 and #13, it appears that the terms of incentivization in this section would represent a move away from the economic diversification necessary to protect against boom-and-bust cycles. **Broad concern: Ministerial discretion**

General comments:

15. The plain language material on “Exploration Zones” does not describe in any level of detail the ability of outside proponents (non-Indigenous) to request an exploration zone. In contrast, the Act says a zone can be established “on the Minister’s own discretion”. If intentional, this obfuscation is concerning because it would mean that industry interests are being favored through the lack of transparency. The text of the Act itself does not clarify this to a level that is satisfactory for the purposes of transparency and public accountability. The greater transparency, the greater trust and confidence the public will exhibit. To this end, we recommend introducing a subsection that requires the Minister to provide a public notice and public engagement when a proposal for an incentive zone is received and when an incentive zone is established. An example of what this could look like is below. **Broad concern: Transparency**

22. (x) The Minister shall, in accordance with the regulations, make public the full text of any written decision in respect of the designation of an area within which staking and acquiring an interest in minerals are subject to requirements that are generally more favorable than the requirements that generally apply under this Act

- a) which includes
 - i. the factors taken into account during the decision-making process;
 - ii. the nature of the favorable changes that have been made to the requirements that apply under this act
 - iii. any other requirements as set out in the regulations; and
- b) is published within 14 days of receiving the designation request.

Prospector’s Licences

Section-specific comments:

16. Section 26. (2)(b) says “any other prescribed requirements.” We understand this clause could enable the regulations to set the requirements of a training program for Prospector License applicants, which we presume will include awareness training as stated in the plain language materials. Since Indigenous engagement and awareness is an important aspect of the new Mineral Resources Act, in our view, it would be appropriate to include a subsection that at the very least enables these training requirements to be set using non-discretionary language. We recommend amending subsection 26. (2) to reflect this. Such training would help to minimize the adverse impacts of the work that is a necessary part of this phase. When considering future regulations, we presume that the training requirements will include cross-cultural sensitivity, history of the NWT and familiarization with the land rights agreements and co-management regimes of the NWT. We look forward to having these assumptions affirmed by the Minister and look forward to participating the development of such regulations. **Broad concern: Effectiveness of the Act**

26. (2) An applicant for a prospector’s license

- a. must be
 - i. an individual who has attained the age of majority, or
 - ii. a corporation entitled to carry on business in the Northwest Territories; and
- b. must satisfy the training requirements [for cultural awareness, legislative awareness, historical context, and local expectations within the territory] laid out in the regulations; and
- c. must satisfy any other prescribed requirements.

General comments:

17. There appears to be no powers explicitly given to the Minister to refuse the issuance of a prospector's license. This should be rectified with a simple section, for which sample wording has been provided below. Transparency and public trust would be better achieved if the written reasons for refusal were posted publicly on the registry. **Broad concern: Ministerial discretion**

27. The Minister may refuse to issue a prospector's licence to an applicant at the Minister's own discretion and with written reasons.

28. The Minister shall refuse to issue a prospector's licence to an applicant if the applicant does not meet the prescribed requirements

Staking and Recording A Claim

Section-specific comments:

18. 28. (4) — While it is positive to see this transparency measure introduced to begin to limit free-entry, we believe it can be strengthened further for the benefit of all parties involved. Subsection (4) says that a public notice of an application to record a claim will be published “within a reasonable time *after*” it is received. This section fails to elaborate on the method of transmission and leaves the time-frame vague and up to the discretion of the Minister. It would be for the benefit of other prospectors as well as stakeholders and applicable governments and communities to publish this information in a format that is accessible to everyone including the public at large, like a website, and with only minimal delay or without delay. To this end we would recommend amending section (4) to include these measures and avoid leaving them to the regulations where they will be less certain and further delayed. This addition, which is proposed below, should be included again in subsection (5) so that it applies to notices provided to Indigenous governments and organizations as well. **Broad concern: Transparency**

28. (4) A Mining Recorder shall ensure public notice of an application to record a claim is given
- a) within 48 hours after the application is received,
 - b) via publication on [name of website], and
 - c) in accordance with any other requirements set out in the regulations.

The above language would serve the additional purpose of aligning the text of the Act with the information disseminated in the plain language material where it says that the “proposed Mineral Resources Act would require notification to interested parties, including but not limited to Indigenous governments and organizations, *at the time* a Mineral Claim application is submitted.”

19. We would like to support the recommendation given to SCEDE by the NWT Association of Communities that stakeholders be given more than a simple notice of an application to stake a claim. This Act does not put into place any requirements for mandatory consultations or engagement with Indigenous governments and organizations or community governments at the exploration and prospecting phase of mine development. Introducing a threshold of work activities and the requirement to consult or engage with applicable governments and organizations when this threshold is crossed, would ensure that this Act provides a pathway for managing land that goes beyond simply notices and conflict resolution. This is elaborated on, and

specific wording is proposed, in the “Work Requirements and Notices of Intended Work” section below. **Broad concern: Accountability**

Mineral Leases

Section-specific comments:

20. It would be useful if the MRA used more specific wording to describe what the “prescribed requirements” for receiving a mineral lease include. This is an important opportunity to ensure that more marginal companies are not allowed to set up risky projects in the NWT. The MRA would be strengthened by including more specific wording in section 37 (2) that references the following conditions to be set in the regulations:

- Economic feasibility study that demonstrates viability
- Environmental review and approval
- Provision of securities

These standards are based on Section 101 of Quebec’s *Mining Act*.

General comments:

21. There appears to be no powers explicitly given to the Minister to refuse the issuance of a mineral lease. This should be rectified with a simple section, for which sample wording has been provided below. Transparency and public trust would be better achieved if the written reasons for refusal were posted publicly on the registry. **Broad concern: Ministerial discretion**

39. The Minister may refuse to issue a mineral lease to an applicant at the Minister’s own discretion with written reasons.

40. The Minister shall refuse to issue a mineral lease to an applicant if the applicant does not meet the prescribed requirements under Section 37 (2).

Work Requirements and Notices of Intended Work

Section-specific comments:

22. 41. (3) — Considering that the notices of intended work are an integral aspect of the transparency that this Act claims to establish in the “Purpose” section, we recommend deleting or at least elaborating on subsection 41 (3). If the requirement for a notice of intended work is waved in certain “prescribed circumstances,” but no further clarification is given as to what those circumstances might be then the requirement is greatly weakened. We would like to be reassured that the “prescribed circumstances” should only happen rarely or in a very exceptional situation.

Broad concern: Transparency

23. 42. (1) — The details surrounding thresholds for notices of intended work need to be clarified. This can be achieved through the addition of subsections to 42 (1) that establish a threshold for work that is strong enough to ensure free, prior and informed consent for Indigenous peoples and transparency for NWT residents. Alternatively, a section enabling this threshold to be set in the regulations would be acceptable. Either of these options are preferable to the current wording of the subsection which states that notices must be filed “at any times the regulations may require,” which does not make explicit reference to any threshold. An example of what the elaboration on a

threshold could look like is found in Ontario's Regulation 308/12, Exploration Plans and Exploration Permits and is copied below. **Broad concern: Transparency**

- a. Any geophysical surveys that require the use of a generator to be carried out.
 - b. Mechanized drilling for the purpose of obtaining rock or mineral samples, if the assembled weight of the drill and its associated equipment, excluding drill rods, casings and bits, does not exceed 150 kilograms.
 - c. Line cutting, where the width of the lines does not exceed 1.5 metres.
 - d. Mechanized surface stripping where,
 - i. a single location is to be stripped and the total area to be stripped does not exceed 100 square metres, or
 - ii. two or more locations are to be stripped and the edges of a location where stripping is to be carried out are within 200 metres of the edges of another location, and the aggregate of the area of the locations to be stripped does not exceed 100 square metres.
 - e. Pitting and trenching where,
 - i. a single pit or trench is to be dug and the total volume of the pit or trench to be dug exceeds one cubic metre but does not exceed three cubic metres, or
 - ii. two or more pits or trenches are to be dug and the edges of a pit or trench are within 200 metres of the edges of another pit or trench and the aggregate of the volume of the pits or trenches exceeds one cubic metre but does not exceed three cubic metres.
24. 42. (5) — The Minister should be required to provide the notice of intended work to applicable Indigenous governments and organizations as well as other applicable land users like community governments (ideally, to the general public) within a reasonable amount of time after it is received by the Mining Recorder. The current language of the Act makes no explicit reference to a time-frame in respect to the release of notices of work. Specific wording suggestions have been given previously for this type of situation (see #10). **Broad concern: Ministerial discretion**

Exploration and Mining

General comments:

25. Again, in this section there appears to be no powers explicitly given to the Minister to refuse the issuance of a production license. This should be rectified with a simple section, for which sample wording has been provided below. Transparency and public trust would be better achieved if the written reasons for refusal were posted publicly on the registry. **Broad concern: Ministerial discretion**
47. The Minister may refuse to issue a production license to an applicant at the Minister's own discretion and with written reasons
48. The Minister shall refuse to issue a production license to an applicant if the applicant does not meet the prescribed requirements under Section 46 (3)

Drill Cores

General comments:

26. 50. — In the plain language materials, the Act is purported to “ensure the collection of geoscience information”. Section 50 deals with abandoned drill cores. It’s hard to tell if there will be more or less geoscience information collected, and how open that is to the public. We see no requirements or references to geoscience confidentiality periods. We recommend at least a general statement be in the Act, such as one clarifying “that the geological environment is a public good, and therefore knowledge thereof must be ensured to be shared with public organisations.” **Broad concern: Transparency, Benefit to Public**

Benefits for People and Communities

Section-specific comments:

27. 51. — It is positive to see a benefits agreement with the people of the NWT legislated. However, this section is lacking in detail and thus its effectiveness and ability to carry through in practice what it sets out to do in theory is compromised. The plain language material states: “The Bill would provide the power for the Minister to make requirements, including targets for benefits that stay in the NWT, for a mining project to go forward. This is a new requirement under legislation, but has been a matter of policy for a long time.” The plain language implies the Minister will make requirements. However, the Bill says that the Minister “may prescribe” requirements, and that there would be targets, which isn’t included. The benefit agreement for the Indigenous governments and organizations is much more detailed, including, for instance, requiring such an agreement “if a production project for the mineral lease meets the prescribed threshold”, which we recommend including in the NWT residents benefit agreement as well. But the plain language also states that by policy all mines have benefit agreements, so having it *almost* legislated appears a step forward. There should be a list of expected or anticipated contents of Section 51 requirements similar to what is found in the recent NIOC Socio-Economic Agreement, listed below. **Broad concern: Accountability**

- employment practices;
- human resources development;
- business development;
- social well-being;
- cultural well-being;
- monitoring and reporting;
- engagement between the parties;
- dispute resolution;
- notice and general provisions; and
- any other matter that the Minister considers in the public interest.

28. 51. (b) — Section 51 establishes Benefit Agreement for NWT residents. Section 52 concerns Benefit Agreements with IGOs. Under Section 54 there is a dispute resolution body established. In order for this to function, tracking of the agreements is needed. Requiring a mechanism is suggested, such as the following. **Broad concern: Transparency**

51. (b) A mechanism for publicly tracking whether all aspects of the agreements are being met will be established in the regulations.

29. 52. — As non-government organizations we do not have the background to comment on this section, other than to recommend that SCEDE respect the recommendations brought forward by Indigenous governments, organizations, and communities during the process of legislative review.

Royalties

General comments:

30. We understand that royalty rates are to be debated and fixed in the future. This is an important measure and we support it being undertaken as soon as possible. Specifically, we support it being undertaken in a public and transparent way that is accessible to all NWT residents and stakeholders, including the co-signers of this written submission. Considering that the economic well-being of the NWT is directly related to government revenues from royalties, and the territorial economy will affect both current and future NWT residents, we urge the GNWT to include all parties in discussions over future regulations. In addition to royalty rates, the discussion should also focus on corporate income taxes paid by *each* mine and increasing the transparency on the gross revenues and profits generated by *each* mine. We find that corporate income taxes can be as problematic, if not more problematic than royalties paid in the mining sector, and this is also a way to have a clearer picture and pay attention to risk of fiscal evasion by some companies or mines. This is elaborated in the following point #31. **Broad concern:**

Transparency

31. This section makes explicit reference to the federal *Executive Sector Transparency Measures Act* (ESTMA) which does ensure some degree of transparency around revenues and profits and is a positive move when compared to the current practice of complete confidentiality. However, ESTMA is a relatively low standard for transparency. Under ESTMA, only amounts above \$100,000 are reported and there are no requirements to report on gross revenues and profits generated for *each* mine. The absence of these numbers makes an accurate assessment of fairness difficult. Additionally, it is a self-reporting system that relies on companies who use different reporting periods, different interpretations of what constitutes fees, royalties and taxes, different ways of aggregating data across jurisdictions and has little to no oversight or quality control. We recommend using instead the standards for payment tracking and reporting set out by the Extractive Industries Transparency Initiative (EITI) which is “the global standard for the good governance of oil, gas and mineral resources.” The revenues should be reported publicly by the relevant government for fees paid for mineral rights acquisition and royalties paid for mineral production from *each* property. This is consistent with international reporting standards established through the Extractive Industries Transparency Initiative and is best practice in terms of transparency. The underlying reasoning for this is that mineral resources are public resources and therefore any revenues the GNWT gets from them should be made public as well. There does not appear to be any specific language in the Bill that requires public reporting of revenues received by the GNWT from mining and we strongly recommend that such wording be added to the Bill. **Broad concern: Transparency**

Statistical Returns & Confidentiality of Information

Section-specific comments:

32. 60. (4) — As per the reasoning laid out in the plain language material, we understand that certain types of information and data gathered during the exploration phase must be kept confidential. However, the ability of the Minister to exercise discretion when designating information as restricted should be as limited as possible. The discretionary language in 60(4) should be replaced with “shall”.
33. 58. (4)(d) — The information disclosed in a statistical return under this section remains confidential unless disclosed by the leaseholder or consent to disclose is given, the lease is abandoned, or 15 years have passed. From our perspective, the time frame of 15 years is arbitrary and not helpful for policy-making. It is our recommendation that this subsection be deleted or changed to reflect a much shorter time frame. **Broad concern: Effectiveness of the Act**

Enforcement, Offences, and Penalties

34. **Offences:** Section 93 lists monetary fines, but nothing that is understood to be imprisonment. The Forest Act has the following language which we recommend be included in the *Mineral Resources Act*. **Broad concern: Enforcement**

“in the case of any other person, to a fine not exceeding \$100,000, to imprisonment for a term not exceeding one year, or to both.”