



Northern Land Council

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4 November 2014

Dr Bill Freeland
Chair
Northern Territory Environment Protection Authority
GPO Box 3675
Darwin NT 0801

By email: NTEPA.Consult@nt.gov.au

Dear Dr Freeland

Re: Submissions in respect of the review of the Waste Management and Pollution Control Act

Please find **enclosed** the submissions of the Northern Land Council in respect of the Waste Management and Pollution Control Act Issues Paper. The NLC notes that its submissions and its identity can be made public and looks forward to the results of this public review process.

If you require any further information or clarification in relation to the attached submissions, please do not hesitate to contact Rebecca Hughes on (08) 8920 5254 or Rebecca.Hughes@nlc.org.au.

Yours faithfully

Joe Morrison
CHIEF EXECUTIVE OFFICER

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Submission Form for Comments and Feedback

Review of the *Waste Management and Pollution Control Act* and *Litter Act*

Submissions close: Monday 27 October 2014, 5pm

Name:	Rebecca Hughes	Email:	rebecca.hughes@nlc.org.au
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Address:	45 Mitchell st Darwin NT		
<p>Your comments will be publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your comments to be made publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your identity to be made publicly available.</p>			

General Comments and Introduction	
	<p>The Northern Land Council (“NLC”) was established in 1973. Following the enactment of the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) (“ALRA”), it became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage traditional lands and seas. In addition to its statutory responsibilities under the ALRA, the NLC is also a native title representative body under the <i>Native Title Act 1993</i> (Cth) (“NTA”). Under both these legislative instruments, the NLC works closely with traditional owners and native title holders to acquire, manage and protect our interests in land.</p> <p>In the following table the NLC has provided some brief responses to the particular issues identified. However, in the process of responding to the issues paper, the NLC has identified four broader issues of overarching concern.</p> <p>As a result, the NLC has developed four key recommendations for the EPA to consider as it reviews the Waste Management and Pollution Control Act (“WMPCA”). These key recommendations are referred back to throughout the following submission.</p>

Please complete the form and send it via one of the following by no later than *Monday 27 October 2014, 5pm*:

Email: NTEPA.Consult@nt.gov.au

Post: NT EPA, GPO Box 3675, Darwin NT, 0801

Privacy: Your personal information will be used for the purpose of collecting and collating comments received on the Issues Paper. The NT EPA is subject to the *Information Act* and its Regulations. Information will not be disclosed to a third party, unless required by law or otherwise stated.

1. The need for a broader review of environmental regulation in the Northern Territory

While the NLC welcomes the review of the WMPCA, the NLC submits that in order to achieve meaningful outcomes, in terms of both the regulatory processes and environmental outcomes, a broader and more systematic review of *all* environmental regulation in the Northern Territory is required.

A broader review of environmental regulation in the Northern Territory is required because environmental regulation takes place under a number of legislative instruments. These include the following acts and where applicable the relevant regulations:

- WMPCA 1998
- Litter Act 1972
- Water Act 1992
- Mining Management Act (**MMA**) 2001
- Northern Territory Environment Protection Authority Act 2012
- Environmental Assessment Act 1982
- Environmental Assessment Administrative Procedures Act 1984
- Weeds Management Act 2001
- Pastoral Land Act 1992
- Northern Territory Aboriginal Sacred Sites Act 1989

A systematic review of all environmental legislation (with consideration of the Commonwealth environmental legislation such as the Environmental Protection and Biodiversity Conservation Act of 1999 and relevant International Conventions) would provide an opportunity to address issues that create inefficiencies and duplication of responsibilities in environmental management. For instance, while the EPA is in most cases the environmental regulator, where environmental offences occur under the MMA, environmental regulation is met by the Department of Mines and Energy (**DME**). This leads to:

- duplicated expertise and resources, for instance where issues of environmental concern are similar on a mineral lease and also outside of it, then both DME and EPA will be required to have appropriately trained staff to deal with the issues;
- additional effort and information gaps for stakeholders and other third parties who, in some cases, are having to communicate with two regulators in respect of a single issue (for example, the NLC has recently had to duplicate engagement across the DME and EPA in relation to environmental issues associated with the McArthur River Mine), as opposed to a single environmental regulator; and
- an inherent conflict of interest for the DME is its dual role in project authorisation and regulation, and in

the promotion of the industry in the Northern Territory (NT).

A systematic review of all environmental legislation relevant to the NT has the potential to promote positive outcomes including but not limited to:

- greater consistency between the various Acts and Regulation; including
 - consistency between environmental offence provisions;
 - consistency in public engagement with environmental issues;
 - consistency in traditional owner engagement with environmental issues;
 - consistency in licensing requirements and regulatory responses to offences;
- an opportunity for the Northern Territory to modernise the environmental legislation, for instance by incorporating key tenets of environmental law such as the precautionary principle, which features in international, Commonwealth and other State and Territory jurisdictions but remains lacking in the Northern Territory;
- an opportunity to unify environmental legislation in the Northern Territory into a single piece of environmental legislation, as per the Victorian *Environmental Protection Act 1970* (Vic);
- reducing “green tape” while upholding strong environmental standards; and
- streamlining Ministerial oversight (currently the Ministers for the Environment, Minister for Mining, Minister for Water who all have roles under the various pieces of legislation, resulting in the duplication of expertise and responsibility in relation to the relevant issues).

2. The need for integrated land management involving traditional owner views and values

Land management in the Northern Territory can involve lack of engagement between stakeholders, including traditional owners, Aboriginal Communities, government departments and proponents. With interests in approximately 90% of the Territory, traditional owners have a distinct and special interest in land management and seek greater involvement in land management activities.

For example, frustrations occur when traditional owners, whose consent may be required for access to land, having granted that access are thereafter sidelined from engaging with a proposal on the piece of land because of a lack of prescribed legislative instruments. For example, there are no requirements for public consultation into the issue of a waste discharge licence under section 74 of the Water Act, despite the fact that the receiving water body may be used by the public, including traditional owners.

3. The need for clearly articulated best practice environmental standards across the Northern Territory.

All environmental legislation in the Territory and other forms of regulation, such as guidelines and subsidiary legislation, should require compliance with current worldwide best practice environmental standards. While some pieces of legislation already contain similar commitments (for example, the MMA) this requirement is not

	<p>consistency applied.</p> <p>4. The need for greater levels of public engagement and accountability.</p> <p>Until there is better public engagement and accountability in respect of environmental regulation in the Territory, the confidence of the public and traditional owners in the EPA and the Northern Territory Government remains compromised.</p> <p>It is submitted that there should be far greater public participation in environmental issues across the Northern Territory. Among other things, public confidence could be boosted through:</p> <ul style="list-style-type: none"> • making more information available to the public, for example by requiring publication on the register (section 9 of the WMPCA) all environmental audit notices (section 48 of the WMPCA) and the results of any environmental audit (under section 53, the NT EPA “may” included the results of an audit to be included in the register); • by utilising consultative committees under section 11 of the WMPCA to maximise public involvement, or as a means of soliciting public views on an issue; • by providing stronger rights for the public, and/or interested or affected parties, rights to appeal the issue of licences or permits, including, for example the decision of the EPA not to prosecute in respect of areas of non-compliance (it is noted that under the Water Act (section 30), a person aggrieved may apply to the Minister to review the matter, but this right of review could be strengthened to allow for an appeal of any decision).
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Addressing pollution resulting from another jurisdiction	<p>1. Should the Act contain explicit provisions to ensure that it applies to activities conducted outside the Territory that cause damage to the Territory’s environment?</p> <p>The WMPCA should, to the highest level possible, provide for the protection of the environment in the Northern Territory. Explicit articulation of offences for persons that cause environmental harm to the Territory by conduct engaged in outside of the Territory contributes to a best practice environmental protection regime.</p> <p>Cross-jurisdictional activities or activities located outside the Northern Territory create a real risk of pollution emanating from another jurisdiction impacting on land in the Northern Territory. The Territory’s borders are often adjacent to Aboriginal land under the ALRA or either subject to claim or determined native title. Equally, these areas are often extremely remote and avoid the environmental scrutiny that areas closer to towns or built up areas are subject to, leaving them especially vulnerable to pollution offences. The inclusion of an explicit provision extending the application of the Act to conduct in other jurisdictions that causes damage to the</p>

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	<p>Northern Territory's environment is important to improving protection of the environment that Aboriginal people live and have property rights in.</p>
<p>Improving Waste Management</p>	<p>2. Should the Northern Territory incorporate the waste management hierarchy into the Act? How could the hierarchy be used to encourage the minimisation of waste generation and/or improvements in reuse and recycling?</p> <p>As per our general concerns stated above, the WMPCA should seek to implement best practice environmental standards to its objectives. To the extent that incorporating a waste management hierarchy would assist this, the NLC is supportive of its inclusion. However, as this issue does not often overlap with the core business of the NLC, this issue is not a priority concern for the NLC's response to the Issues Paper.</p> <p>3. How important is language in encouraging reuse and recycling? Would 'materials' or 'resource' management or similar phrasing change your perceptions about, and approach to, reuse and recycling?</p> <p>As this issue does not often overlap with the core business of the NLC, this issue is not a priority concern for the NLC's response to the Issues Paper.</p> <p>4. What may be some of the impediments or hindrances to improving reuse and recycling in the Northern Territory? How could these impediments or hindrances be addressed?</p> <p>There is a lack of infrastructure for disposal facilities generally in remote and rural areas. To promote waste management, reuse and recycling, appropriate facilities need to be provided for in town planning. Community education, involvement and consent is key to improving reuse and recycling in the Northern Territory.</p> <p>5. What types of waste management activities should require a licence?</p> <p>It is difficult to provide a considered response to this question without further discussion of the purpose of waste licensing.</p> <p>For example, if licences are not intended to endorse waste discharge that would otherwise be illegal, licences should not be provided on the basis of such discharge being inevitable. If licences are intended to control or limit the impact of waste disposal, then the provisions of a licence should include actions that control and limit such impacts.</p> <p>6. How can we improve our knowledge about the type and amount of wastes being generated, reused and recycled in the Northern Territory?</p> <p>Local people have extensive knowledge about the waste prevalent on their land. Investing in building relationships with communities across the Northern Territory will assist the EPA to obtain current and accurate information on waste and the type, amount and</p>

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	management of waste in various communities. Aboriginal people are critical players in this discussion.
Waste Levies	<p>7. Should the Territory Government consider imposing levies? To what types of activities or wastes would the levy be applied?</p> <p>Levies may provide incentive to reduce waste generation, and provide resources for waste management (through the application of funds derived from levies). Levies should be proportional to the real volumes of waste requiring management. However, caution should be exercised in remote areas.</p> <p>This issue highlights again the need for a sophisticated model of land management (as described above in the introduction), that is sensitive to the needs of land management in the Northern Territory. Sensitivities to the different needs of both urban and remote communities, and the different values and priorities of different populations will be of assistance to assessing the value of, for instance, the application of levies.</p> <p>8. What other infrastructure and industries would improve opportunities for recycling and reuse? Would these be required before a levy could be imposed?</p> <p>As per above, a sophisticated land management model is required as a preliminary step to considering what infrastructure and industries would improve opportunities for recycling and reuse. In order to obtain any kind of success, the EPA needs to be sensitive to the needs of local communities, rather than seeking to apply a blanket approach. In many instances, simply the provision of disposal facilities and educating and encouraging people in remote communities to use those facilities would assist.</p>
Improving contaminated sites management	<p>9. Should the management of contaminated sites be given a greater focus in the Northern Territory?</p> <p>The Issues Paper advises that all jurisdictions, except for the Northern Territory, “have developed a legislative framework for the identification, registration, remediation and ongoing management of contaminated sites”. It is concerning that again the Northern Territory has slipped well behind Nationally accepted environmental standards. As per the general recommendations above, the NLC urges</p> <ol style="list-style-type: none"> 1. the need for a broader review of environmental regulation in the Northern Territory 2. the implementation of best practice environmental standards. <p>Specifically, the issue of contaminated sites also raises the concern, in respect of the separation of roles and responsibilities between the Department of Mines and Energy and the EPA. The Mining Remediation Fund mentioned in the Issues Paper is a fund that is established under the Mining Management Act, and is applied to both new and existing mine operators and calculated at 1% of the security paid under their mining authorisation. As the levy is collected under the MMA, the Mining Remediation Fund is administered by DME. Whether or not this duplicates activities or processes of the EPA will depend from issue to issue. However, it highlights yet again the need for an integrated, simplified approach to environmental management in the Northern Territory.</p>

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	<p>10. How do you suggest we approach management of potentially contaminated sites?</p> <p>Further to the comments above, the efficient and effective management of potentially contaminated sites requires an overhaul of existing legislative regimes. To efficiently manage the issues of contaminated sites, the NTG (and the EPA) need to consider the whole process including, identification of contaminated sites, assessment of damage/risks, implementation of strategy based on assessment and ongoing reviews of implementation. At the same time, the best practice environmental standards need to be implemented.</p> <p>Management of potentially contaminated sites needs to be dealt with by a single agency. Further to the above comments, rather than duplicate process, information and skills between DME (where contamination occurs within a mining lease) and EPA (where contamination occurs outside of a mining lease), it would be more efficient for a single agency to deal with the issues. In this case, owing to its wider experience and independence, it makes sense for the EPA to take this regulatory function from DME in respect of contamination on mining leases.</p> <p>It is not clear whether “contaminated sites” is defined to include land and waters affected by runoff or discharge from contaminated sites. While the management of contaminated sites is critical, the identification and mitigation of cultural, economic, and environmental impacts flowing from contaminated sites on surrounding (e.g. downstream) lands is also important; such an approach is also;</p> <ol style="list-style-type: none"> 1. essential for maintaining effective stakeholder engagement, and 2. a key step in developing a targeted management plan. <p>Effective engagement of stakeholders, particularly native title holders and traditional owners of lands subject to the Aboriginal Land Rights Act, is imperative for effective management of contaminated sites and affected lands. This is because Indigenous interests in lands are non-transferable and intergenerational, and land is central to the economy, health and wellbeing of Aboriginal people.</p>
Reporting Incidents	<p>11. How can we improve the WMPC Act to ensure that the right incidents are reported by the right person at the right time?</p> <p>The commentary in the Issues Paper in relation to the reporting of incidents highlights the need for a single environmental legislative regime. A single regime would assist mining operators with a single scheme for environmental reporting. Where other jurisdictions have uniformly adopted a different approach (i.e. a hierarchy of responsibility for reporting of incidents), the Northern Territory should aspire to the highest environmental legislative standards and follow suit.</p>
Addressing discharges and emissions	<p>12. How do you suggest we approach management of emissions and discharges to the Northern Territory environment?</p> <p>As advised in the EPA’s Issues Paper of 15 September 2014, discharges of waste to water can be regulated in one of five different ways. This situation therefore highlights the need, as set out in the general recommendations above, for</p>

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	<ul style="list-style-type: none"> • a broader review of environmental regulation in the Territory: in this context, the duplication and dispersion of environmental regulation makes it difficult for proponents of discharge and other stakeholders to identify, apply and follow the correct legislative process. The regulatory split between emissions and discharges occurring within and outside of a mineral lease could be addressed. Also, where there is no existing regulatory framework (for example, emissions to air where they do not originate from a licensable activity under the WMPA), a broader review would identify opportunities to correct such gaps. • the need for integrated land management involving traditional owner views and values: the current approach does not appear to provide for formal involvement of traditional owners in relation to emissions and discharges onto their lands and waters. An integrated approach to land management that provides for traditional owners views and values, would address these issues. • Best practice environmental standards across the Northern Territory: it is not clear how, when there are up to 5 different avenues for approvals of waste and discharge, how best practice environmental standards are applied to different legislative mechanisms. • Public engagement: public engagement with waste and discharge approvals is frustrated not only by the lack of formal mechanisms for public engagement but also by the multiple legislative schemes. Effective public engagement will result from transparency and accountability in the regulation of waste-generating industry. This was the subject of comprehensive discussion in NLC’s submission to the NT EPA on the Draft Guidelines to Waste Discharge Licenses in March this year. • Engagement of cultural monitors from traditional landholding groups during environmental monitoring and sample collections on country. <p>13. What are the benefits or costs associated with your suggested approach?</p> <p>Understanding how waste affects current and future land use (via proper engagement of land users) enables the development of waste management plans that reflect stakeholder expectations.</p> <p>14. How effective is the Northern Territory’s current regulatory regime in managing emissions and discharges?</p> <p>The permitted discharge at Redbank Mine of highly contaminated waters under a waste discharge licence issued by the EPA is an example of the ineffectiveness of the Northern Territory’s current regulatory regime in managing emissions and discharges. It is also an example of the inefficiencies of having the EPA and DME simultaneously involved in the management of environmental regulation. The issues at Redbank Mine were the subject of an EPA Report in March 2014.</p> <p>15. Are there opportunities to more closely align the management of emissions and discharges with the risk posed by the emission or discharge?</p> <p>Risks can only be comprehensively identified and understood (where the environment has social and economic dimensions) where all</p>

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	<p>stakeholders are engaged in risks analysis. Management should always be informed by analysis of risk. NLC’s March 2014 submissions on the Draft Guidelines for Waste Discharge Licences provides some practical discussion on how Indigenous stakeholders may be better involved in analysis of risks associated with emissions and discharge of waste. Examples include but are not limited to:</p> <ul style="list-style-type: none"> • Native title holder and traditional owners are informed when a waste discharge licence application is submitted in their region • Native title holders and traditional owners are provided opportunity to see and provide comment to the applicant and NT EPA on the application and associate documentation (such as community consultation plan, water management plan, etc.), whilst they are in application phase and before a licence is issued. <p>16. What types of emissions and discharges should be managed under the WMPC Act?</p> <p>Please see comments elsewhere on streamlining environmental regulation in the Northern Territory.</p> <p>17. How can we best manage diffuse pollution sources?</p> <p>There needs to be a clear definition of what ‘diffuse pollution sources’ and ‘manage’ entails, as well as a clear understanding of what type of pollution needs to be managed and to what standard. The decision to, and responsibility of, managing diffuse pollution sources needs to remain the responsibility of government and/or business, as opposed to landowners. However, as a matter of community health and safety, traditional owners should be consulted and provided the reasons for decisions and reasons to manage or not manage pollution.</p> <p>18. How effectively can your proposed approach to the management of emissions and discharges manage diffuse pollution sources?</p> <p>19. How can we ensure appropriate management of a site continues once an activity has ceased?</p> <ul style="list-style-type: none"> • Include rehabilitation requirements in all licences and permits to be implemented prior to the cessation of the activity. • Ensure that site inspections are conducted at cessation of activity. • Ensure that offences are created and enforced in relation to lack of compliance. • Make it a condition of licences to include letters of credit/secure charge to put funds above secured creditors. • A levy on any emissions or discharges requiring a waste discharge licence. • Ensure that before contaminated sites are sold or commercial interests transferred, it is fully understood by the purchaser that the responsibility for ongoing pollution from that site will be their responsibility into the future, and require them to demonstrate capacity to manage such liability. This could be achieved by a clear legislative basis for land occupier responsibility for environmental contamination.

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Improving enforcement	<p>20. What compliance and enforcement tools should be included to ensure that the WMPC Act can be appropriately enforced?</p> <ul style="list-style-type: none"> • Better engagement with the public and wider publication of notices issued under environmental legislation, for example, environmental audit notices under the WMPCA, will enhance enforcement by using the eyes and ears of the public to report concerns. • The pollution hotline should be more widely advertised. • A register available to the NLC providing information on the transport of waste and hazardous substances on aboriginal land and native title land. <p>21. Do you have recommendations on the types of offences that should be included in the WMPC Act?</p> <p>Current offences should be retained and the NLC submits a recommendation that new offences are identified to promote better environmental outcomes. In certain circumstances, the use of strict liability environmental offences will encourage a culture of environmental compliance. For example, in South Australia the existence of pollution itself evidences harm, as opposed to there being an element of causation in an offence where the prosecution has to prove harm as the consequence of pollution.</p> <p>22. How could the offences be improved to ensure that the WMPC Act can be appropriately enforced?</p> <p>23. What sanctions and remedies should be available under the WMPC Act?</p> <p>The use of adverse publicity orders should be considered as a mechanism which promotes a culture of environmental compliance.</p>
Advertising material	<p>24. Is littering a problem in your community?</p> <p>25. As a municipal or shire council, do you want littering provisions to apply within your area of responsibility?</p> <p>26. Is the placement of advertising material a problem in the Territory? Is the current regulation sufficient? Is additional regulation required?</p>
Illegal dumping	<p>27. Would provisions such as those in Queensland and Tasmania which make it easier for the public to participate in litter enforcement activities assist to manage illegal dumping and litter?</p> <p>28. Should the Northern Territory 'deem' certain members of the public to be responsible for litter?</p> <p>29. What other actions or incentives could be implemented to reduce the incidences of illegal dumping?</p>

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY

Section	Comment
Environment protection acts	<p>30. Should the Northern Territory consider development of a broad environment protection act similar to other jurisdictions? What might be advantages or disadvantages of adopting an environment protection act over issue specific legislation?</p> <p>Yes, see above general recommendations.</p> <p>31. In addition to matters currently contained in the WMPC Act and Litter Act, what other matters could be included in any environment protection act?</p> <p>Yes, see above general recommendations. In short, environmental regulation in the Territory should be combined into a single act.</p> <p>32. Are there matters currently contained in the WMPC Act or Litter Act that could be better managed through an alternate mechanism, such as policy, rather than through legislation?</p>
Local government	<p>33. Is there an increased role for local government in the regulation of waste and pollution in the Territory? What is that role?</p> <p>The NLC's primary concern is that environmental regulation is efficient, effective and well-resourced. While elements of this process may need to engage with the local government (or other mechanisms), what is critical is that the process is transparent, independent efficient and effective. In most instances, it would appear that, due to its structural independence, the EPA is best-placed to take a lead role in environmental regulation in the Northern Territory. However, this is not to deny an appropriate role for other organisations. Please see comments in the general introduction above.</p>
Improving community involvement	<p>34. How could enhanced community involvement improve the Northern Territory's management of waste and pollution and improve environmental outcomes for the Territory?</p> <ul style="list-style-type: none"> • See general comments above • Legislative requirements to use local traditional owners or ranger groups (if available) for site inspections, remediation works, access to country • Legislative requirements to consult with native title holders and traditional owners prior to the grant of licences or permits • Legislative provision for community consultation prior to the grant of licences and permits • Legislative provision for public release of all licences, permits, and similar. <p>35. Should the WMPC Act include requirements for the NT EPA to seek public comments on the application for a licence or the proposed conditions of a licence? If so, how could an efficient and effective process operate?</p> <ul style="list-style-type: none"> • The public has a significant interest/right to know in respect of discharges and emissions;

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	<ul style="list-style-type: none"> • Public consultation widely held in respect of other issues, would need to place reasonable timeframes around responses; • Would need to ensure appropriate advertisement, etc; for example, the internet is not always accessible to people living in remote locations • Native title holders and traditional owners should have access to all information relevant to waste emission or discharge that affects them, including but limited to Environmental and water management plans, monitoring plans and results. • Please refer for more detail to the NLC’s march 2014 submission to the Draft Guidelines for Waste Discharge Licences. <p>36. Who should be allowed to appeal a decision made under the WMPC Act? What should be the basis for that appeal?</p> <ul style="list-style-type: none"> • Under the EPBC Act “interested persons” can seek review of an decision • The right to appeal should be based on an interest in the decision, not a formal right of ownership • For the avoidance of doubt, the legislation should specify that traditional owners or native title holders of affected land are interested persons