



**Arid
Lands
Environment
Centre**

Office: 90 Gap Road Alice Springs NT
Mail: PO Box 2796 Alice Springs 0870 NT
Web: www.alec.org.au
Phone: 08 89522497
Email: policy@alec.org.au

ALEC Submission on the Draft NT Environment Protection Regulations

The Arid Lands Environment Centre (ALEC) is Central Australia's peak community environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980. ALEC has been engaged with this program of environmental regulatory reform since the release of the initial discussion paper in 2017 and is heartened to see the reforms progress to this stage.

ALEC is supportive of the release of draft *Environment Protection Regulations* (The Regulations) to modernise the framework of environmental protection for the Northern Territory which will strengthen accountability, transparency and enforceability in environmental governance.

This submission outlines specific comments on clauses in the Regulations. Constructive comments have been proposed in order to improve the Regulations by increasing the ability of the public and impacted communities to engage in the environmental assessment and approval process. As they are currently drafted, the Regulations are robust, but they provide a disproportionate degree of influence to a proponent as compared to the public more generally. This is particularly apparent in the regulations addressing statements of unacceptable impact and a refusal to grant approval. The imbalance in these consultation provisions should be rectified to ensure that public environmental issues are given appropriate weight during the decision-making process.

Public interest considerations should be given greater recognition in the regulations to ensure that the Environment Protection framework upholds the public interest.

The Regulations

4. We consider that it is important for harm to not be confined to a monetary value. There are ways of evaluating harm that could consider qualitative assessments in instances where there may be no readily available method of quantifying the economic costs. See for example the New Zealand cultural health index.¹

6 (2). Whether the body corporate has been convicted of a breach of a law of another jurisdiction that relates to the physical or biological environment.

6 (4). The Minister must provide reasons for their decision if conduct mentioned in sub-regulation (2) has been disregarded.

41 (4). The time specified in the notice must be not less than 10 business days after the date of the notice or no more than 30 business days after the date of the notice.

¹ <https://www.mfe.govt.nz/publications/fresh-water/cultural-health-index-streams-and-waterways-tool-nationwide-use/4>

42 (c). The EPA should ensure that a draft TOR is comprehensively reviewed and scrutinised before being accepted.

45. The EPA should have the ability to modify a draft TOR during a proponent initiated EIS referral.

47. (2). A strategic referral may not be appropriate to be accepted for standard assessment. These referrals should require distinct information around the parameters of an environmental assessment.

50 (1). As soon as practicable or less than 10 business days after the decision is made.

51 (2). The submission period should be consistent regardless of the type of referral, strategic referrals will require as much time as a proponent initiated EIS.

57 (d) (ii). What are the types of assessments that could be carried out for a strategic assessment? Are the same options applicable to a strategic assessment? Is there no greater rigour applied to a strategic referral compared to a standard assessment?

- ALEC is cautiously supportive of strategic assessment but understands that there needs to be more clarity on how this framework would be implemented to ensure it will provide a high level of rigour and therefore lead to stronger environmental outcomes.

58. Include criteria that evaluate the expected level of community interest on the activity or proposal. Any relevant environmental factors that should be considered because of the context or location of the proposal.

59. The minister must also consider the extent to which there is public interest or community engagement on the issue. Public inquiry should be used to broaden the scrutiny of a project and communicate the risks to the public. Certain referrals are appropriately assessed through an inquiry and these regulations should allow more discretion for the Minister to consider what such a situation would look like.

61 (2). Or that there is significant community opposition or concern. Regulation around refusal should include that it *could* have significant environmental impacts, rather than it being likely to have.

64. (2) (b). The Minister should provide reasons as to why the EPA should carry out a standard assessment and why the EPA advice has not been accepted.

65. (1). Why should the Minister obtain the views of a statutory decision-maker, what are the justifiable grounds for another department to provide input on a decision to refuse a project? They do not have all the material before them that has informed the decision of the Minister.

66. (2) (b). This is onerous, the Ministers should not invite defence from a proponent as to why they consider approval is not appropriate without also considering the views of those who think the Minister's decision is appropriate.

- The cumulative result of these provisions could make the process of refusing approval onerous as there are ample opportunities for a proponent to influence the final decision. This could make it highly unlikely an approval would ever be refused. Any submission on a show cause notice should be publicly available.

- Must not be less than 10 business days but less than 30 days.

72. For a period of 24 months after the decision is made. Need to avoid situations of concurrent similar applications.

79. Not less than 30 business days after the date of the notice. This will provide consistency and fairness in process and balance rights afforded to proponents with third part stakeholders.

- If the direction is to give the EPA a draft TOR then direction should be published for public consultation.

80. This needs more clarity on what constitutes a form response.

5) The NT EPA may determine to withhold the submission if it considers this to be appropriate and in the public interest.

84. This should be limited to ensure it does not continue throughout the assessment of a project.

104. EPA will not prepare TOR for EIA if a proponent-initiated referral has been accepted, is there scope for the EPA to modify or amend draft TOR prepared by a proponent through a proponent initiated EIS process? This is a concern about inadequate oversight during the draft TOR process.

106. This clause is not considered necessary. There is no public interest justification for providing an opportunity for a proponent to be consulted on the draft TOR. This is another clause that cumulatively, provides an inordinate degree of influence to the proponent to contribute to the EIA process that community expects to be conducted independently and impartially.

108. The submission period should be 30 business day.

141. Remove ability for proponent to request a waiver of a supplement to a draft environmental impact statement. This decision should not be determined only by the EPA or proponent, there will be submitters who are expecting response to their submissions. If submissions have been received that pose questions to the proponent a supplement that responds to those questions should always be required.

-Alternatively, this clause could be amended by providing that the supplement is waived only if it is in the public interest.

149. (2). Appropriate qualifications, experience and independence to assist the inquiry.

152. The proponent must respond to the the findings or the report in a supplementary report or provide additional information and a statement on how the report has been considered.

159. (2). Ensure that this clause will enable Land Councils to be consulted.

- Minister should provide reasons for the decision on the draft approval or statement and how they have taken the submissions, including those from the proponent into account.

169. Support this clause. Consultation on notice of significant variation is necessary to ensure adequate community engagement.

(c) (v). Only applies if the significant variation relates to an impact or activity that is sufficiently separate to the original proposal as to constitute a separate action. There needs to be a safeguard here to ensure

that projects cannot be reduced in size so that infrastructure is considered ancillary and therefore bypasses full environmental impact assessment.

209 (2) (b). Amend to include the need to consult anyone who has made a written submission on the proposal.

Conclusion

The Regulations should be amended as suggested to empower decision makers to consider the public interest and ensure there is adequate public oversight of the assessment and approval process.

ALEC is grateful for the opportunity to provide formal comments on the Regulations and commends the commitment of the Department to open and thorough consultation. ALEC will continue to be engaged in this process as it progresses to reforms of the waste management framework and regulation of the environmental impacts of the mining industry.