



Stakeholder Engagement Report on Draft Environment Protection Legislation for the Northern Territory

For the Northern Territory Department of
Environment and Natural Resources

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TABLE OF CONTENTS

1.0	Executive Summary	3
1.1	Objective	3
1.2	Key findings: Stakeholder views on draft EP Legislation	3
1.3	Key findings: Stakeholder views on DENR consultation.....	5
2.0	Context	6
2.1	Scope	7
2.2	JTA role.....	7
3.0	Approach	8
3.1	Sensitivities	8
3.2	Activities	8
3.3	Assessment methodology	11
4.0	Findings	12
4.1	Widespread support for reform.....	12
4.2	The draft EP Legislation needs improvement	13
4.3	Five main areas of concern	15
4.4	Other specific stakeholder feedback	26
5.0	Consultation Evaluation	32
5.1	Methodology	32
5.2	Findings	32
6.0	Conclusion	34

Abbreviations

DENR	Department of Environment and Natural Resources of the Northern Territory
DPIR	Department of Primary Industry and Resources of the Northern Territory
<i>EA Act</i>	<i>Environmental Assessment Act</i>
EAAP	Environmental Assessment Administrative Procedures
EIS	Environmental Impact Statement
EP Legislation	Proposed Environment Protection Legislation comprising the Exposure Draft Bill and Exposure Draft Regulations released for public comment by the NT Environment Minister on 4 October 2018
<i>EPBC Act</i>	The <i>Environment Protection and Biodiversity Conservation Act 1999</i> is the Australian Government's central piece of environmental legislation
ESD	Ecologically sustainable development
NT EPA	Northern Territory Environment Protection Authority
PER	Public Environment Report under the NT's existing <i>EA Act</i>
WMPC Act	<i>Waste Management and Pollution Control Act</i>

1.0 Executive Summary

1.1 Objective

In October 2018, the Northern Territory (NT) Department of Environment and Natural Resources (DENR) engaged JTA Australia (JTA) to facilitate important discussions with key stakeholders in the Territory and collect constructive feedback on the Exposure Draft Environment Protection Bill and Regulations (draft EP Legislation).

1.2 Key findings: Stakeholder views on draft EP Legislation

Given the significance of the proposed EP Legislation, public participation in the engagement program was relatively low, but representative of the NT population with a total of 33 written submissions and 178 form letters received and 35 key stakeholders interviewed. The level of engagement is not considered to indicate a low level of interest in the review of this significant reform of environmental legislation for the Territory. Rather, it is considered to be a symptom of the volume of consultation currently underway.

When approached, all but one of the 36 key stakeholders were able to participate in interviews with JTA. However, very few had reviewed the draft legislation beforehand. Some had read the NT Government's fact sheets or sections of the legislation and used that information as the basis of their comments. As such, many comments from interviews were general in nature and described needs and preferences rather than identifying specific changes to the draft EP Legislation.

Most of the detailed feedback came via 27 submissions from peak bodies and other representative organisations. Around half of those organisations were specifically targeted during the interview process coordinated by JTA. DENR received 6 unique submissions from the general public as well as 178 pro-forma letters organised by an environment group.

1.2.1 Widespread support for reform

A clear majority of stakeholders support reform of the NT's environmental management framework. Stakeholders agree there should be:

- a revamp of current environmental legislation
- recognition of the 'NT difference' with legislation that is fit for purpose
- tighter definitions to remove 'grey areas' and subjectivity
- clear guidance on the environmental approval process
- consistent application of legislation and regulation
- adequate resourcing from government to enact and enforce reforms.

1.2.2 The draft EP Legislation needs improvement

The majority of stakeholders have concerns with the draft EP Legislation as it stands. Concern ranges from relatively minor suggestions for improvement to calls for the NT Government to drop the new legislation altogether and focus instead on better administration of the existing *Environmental Assessment (EA) Act* and Environmental Assessment Administrative Procedures (EAAP). The overriding sentiment is that there is a lot of work to do to meet stakeholder expectations for the draft EP Legislation. This

includes specific improvements to the draft Bill and Regulations as well as their scope and the process for their implementation.

1.2.3 Five main areas of concern

Resourcing the legislation is critical

Without exception, stakeholders identify resourcing as the major concern for any new EP Legislation in the NT. Primarily this relates to the NT Government's ability to provide appropriately skilled people to resource the draft EP legislation. It also refers to the need to ensure integration among NT Government Departments, develop guidelines and other supporting material, establish support systems, provide training for staff, proponents and community stakeholders, and support enforcement.

Consultation should be prescribed in the draft EP Legislation

A substantial number of stakeholders note consultation is 'absent' from the draft EP Legislation. They want the draft EP Legislation to explicitly prescribe consultation requirements, especially for Aboriginal people and other 'frontline' communities outside Darwin, Alice Springs and Katherine.

Regulatory burden threatens the NT economy

Industry stakeholders hold grave concerns that the current draft EP Legislation will drive investment out of the NT. Prime concerns are the lack of certainty and clarity about the assessment and approvals process, duplication and conflict with other legislation, the time and cost for approvals and the increase in 'green tape'.

Definitions must be tightened

A common criticism of the draft EP Legislation is that terms/concepts/principles need to be clearly defined and understood to ensure consistency and prevent subjective decisions and costly court cases. In particular, stakeholders want the legislation to clarify 'significant environmental harm', 'significant harm' and 'major consequence' and align ecologically sustainable development (ESD) principles with other jurisdictions and the Rio Declaration on Environment and Development.

Further detail needed on proposed reforms

Many stakeholders say the draft EP Legislation has insufficient detail to enable stakeholders to provide meaningful comment. Stakeholders want further detail on the interaction with other Territory and Australian legislation, Territory environmental objectives and values, triggers for referral pathways, terms of reference, financial provisions, maximum timeframes, offsets and transitional arrangements.

1.2.4 Other stakeholder concerns

In addition to the major areas of concern, stakeholders provided feedback on many aspects of the draft EP Legislation, including specific concerns with various sections of the draft Bill and draft Regulations.

Feedback on frequently raised topics is listed below and detailed in this report:

- merits review has divided NT stakeholders in terms of the principle but also united them in criticism of the way the NT Government acted to repeal merits review appeal rights during the consultation phase
- opinion is divided on judicial review
- stakeholders are divided on the new environmental approval
- the new referral pathways get a mixed review
- there is cautious support for strategic assessment
- notification and publication need to encourage participation and transparency
- cumulative impacts must be assessed by government
- climate change policy considerations should be incorporated in the legislation.

1.3 Key findings: Stakeholder views on DENR consultation

During interviews, JTA canvassed key stakeholder views on the NT Government's consultation programs, specifically those run by DENR. Recurring responses were:

- stakeholders are fatigued by the NT Government reform agenda
- stakeholders want more time
- stakeholders want more opportunities for input
- Aboriginal people need to be more extensively consulted
- stakeholders want information sessions for their organisations and the general public so they can better understand what is under consideration and provide more informed comment.

2.0 Context

The Northern Territory Government is overhauling its current environmental regulatory system with the aim of:

- building community trust
- facilitating investor certainty and
- delivering better environmental outcomes.

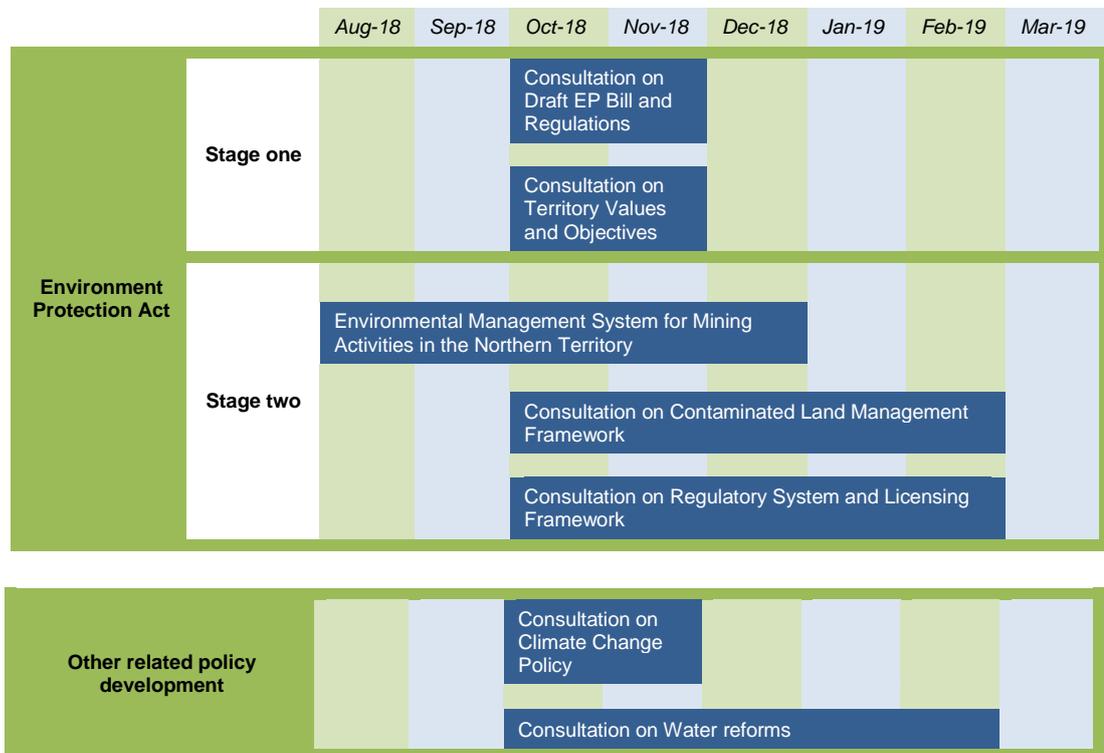
The Government’s stated goal is to deliver sustainable development in the Northern Territory. A single piece of legislation – the *Environment Protection Act* and accompanying Regulations – aims to provide a best practice environmental management regulatory framework, replacing the existing *Environmental Assessment Act (EA Act)* and the *Waste Management and Pollution Control Act (WMPC Act)*.

The *Environment Protection Act* is being developed in two stages:

- Stage one reforms the environmental impact assessment system and introduces an environmental approval to be issued by the Minister for Environment and Natural Resources.
- Stage two integrates the *WMPC Act* into the *Environment Protection Act* and includes provisions for the environmental regulation of the mining industry.

The timeline below depicts the various consultation programs running concurrently as part of the NT Government’s environmental reform agenda:

Consultation timelines for the development of the overarching environmental regulatory framework



2.1 Scope

This stakeholder engagement program was designed to seek and collate feedback on the draft EP Legislation, which comprised the draft Environment Protection Bill (Bill) and accompanying draft Regulations (Regulations). DENR had prepared these exposure drafts following discussions with stakeholder groups about policy elements and the overall framework.

This public consultation was the first time stakeholders had reviewed the draft Bill and Regulations in their entirety. Rarely have Territorians been given the opportunity to review legislation and suggest changes prior to its introduction to Parliament.

In another first, the NT Government also committed to providing information back to stakeholders on comments received and how they have been incorporated into the draft EP Legislation or why some comments could not be accommodated.

On 4 October, Minister for Environment and Natural Resources, Eva Lawler, released both documents for an eight-week public consultation period. Submissions closed on 3 December 2018.

2.2 JTA role

In October 2018, DENR engaged JTA to design and implement a program to engage with key stakeholders during the public consultation period for stage one. JTA's engagement objective was to facilitate important discussions with key stakeholders in the Territory (and elsewhere) and collect constructive feedback on the draft EP Legislation. In doing so, JTA supported DENR in providing a transparent process that successfully increased stakeholder involvement in the legislative review process.

JTA worked alongside DENR's team to refine its engagement method and activities, identify and interact with key stakeholders, report on progress and evaluate performance against the engagement objective.

3.0 Approach

3.1 Sensitivities

JTA identified several stakeholder concerns that needed to be addressed to demonstrate that this was genuine and transparent engagement. Actions taken to address these concerns are detailed below.

Concern	Actions taken
Short timeframe for consultation	<ul style="list-style-type: none"> ▪ Commenced stakeholder interaction ASAP ▪ Approached a broad cross-section of stakeholders ▪ Contacted authors of previous submissions ▪ Expanded the stakeholder list to respond to stakeholder interest
Key stakeholders overwhelmed by the Government's reform agenda	<ul style="list-style-type: none"> ▪ Provided interviewees with relevant pre-reading ▪ Provided a brief overview of key changes ▪ Thoroughly documented interviews to capture stakeholder views and thereby negate the need for stakeholders to prepare a separate submission
Stakeholders feel prior input was ignored in the draft EP Legislation	<ul style="list-style-type: none"> ▪ Asked stakeholders to review meeting notes ▪ Committed to sending submission authors an acknowledgment of their input and description of how the draft legislation changed as a result (or why not)
Scrutiny Committee will assess Bill after public process	<ul style="list-style-type: none"> ▪ Agreed to maintain engagement with stakeholders throughout the approval process to explain decisions

3.2 Activities

3.2.1 Key stakeholder identification

For the purposes of this engagement program, 'key stakeholders' were defined as representative groups who could speak with authority for a large number of stakeholders likely to be affected by the draft EP Legislation. This included peak bodies, non-government organisations, relevant government authorities, current environmental licence holders and influential individuals who represent a range of views.

JTA used DENR's existing list of key stakeholders as a starting point and augmented the list as needed. This included adding stakeholders who had been involved in earlier stages of the process, as well as prior submission authors.

The resulting key stakeholders are listed by type below:

Stakeholder organisation	Type
1. Anindilyakwa Land Council (ALC)	Aboriginal/environment
2. Central Land Council (CLC)	Aboriginal/environment

Stakeholder organisation	Type
3. North Australian Indigenous Land and Sea Management Alliance (NAILSMA)	Aboriginal/environment
4. Northern Land Council (NLC)	Aboriginal/environment
5. Tiwi Land Council (TLC)	Aboriginal/environment
6. Amateur Fishermen's Association of the NT (AFANT)	Agriculture
7. Northern Territory Cattlemen's Association	Agriculture
8. Northern Territory Farmers Association	Agriculture
9. Northern Territory Seafood Council	Agriculture
10. Arid Lands Environment Centre (ALEC)	Environment
11. Australian Marine Conservation Society (AMCS)	Environment
12. Environment Centre Northern Territory	Environment
13. Environment Institute of Australia and New Zealand - Northern Territory Division (EIANZ NT)	Environment
14. Environmental Defenders Office NT (EDONT)	Environment
15. Graeme Sawyer (former Darwin Mayor)	Environment
16. Lock the Gate Alliance NT	Environment
17. Northern Territory EPA (NT EPA)	Environment
18. Pew Charitable Trust	Environment
19. Department of Environment and Energy	Federal Government
20. Chamber of Commerce NT	Industry
21. Land Development Corporation (LDC)	Industry
22. Landbridge (Port of Darwin)	Industry
23. NT Land Corporation (NTLC)	Industry
24. Urban Development Institute of Australia NT (UDIA NT)	Industry
25. Ward Keller Lawyers	Industry
26. Local Government Association of the Northern Territory	Local Government
27. Association of Mining and Exploration Companies	Mining
28. Extractive Industry Association	Mining

Stakeholder organisation	Type
29. GEMCO	Mining
30. Minerals Council of Australia NT Division	Mining
31. Tellus Holdings	Mining
32. Power and Water Corporation	NT Government
33. APPEA Limited	Oil and Gas
34. ConocoPhillips Australasia	Oil and Gas
35. INPEX Australia	Oil and Gas
36. Waste Recycling Industry Association NT	Waste

JTA established and maintained a database of key stakeholders to track contact and capture sentiment, issues and recommended solutions. Submission authors have also been captured in the database to provide DENR with a single point of reference for future engagement activities. The database will be used throughout the development of the legislation to provide updates and feedback to stakeholders.

3.2.2 Interviews

JTA coordinated interviews with 35 key stakeholders during the eight-week public consultation period, with the first interview held on Monday 29 October and the last interview held on Thursday 29 November 2018. Teleconferences were arranged with some interstate stakeholders to minimise cost. However, face-to-face contact was arranged wherever possible for NT stakeholders.

Interviews provided stakeholders with an opportunity to speak freely to an engagement specialist whose role is to listen, probe, understand and document their views. Unlike a formal submission, interviews provided an opportunity to engage in dialogue with stakeholders and provide clarification to an independent agent.

Most interviews took between 45 minutes and one hour, with two hours required for a small number of key stakeholders. Interview notes were provided after each meeting to demonstrate transparency and verify documented views.

3.2.3 Round tables

Where it was practical to do so, JTA combined stakeholder groups at round table events to enable input from several stakeholder groups at one time. This format had the added benefit of providing a wide range of feedback from stakeholders within a particular group, highlighting areas with a lot of support and those where there was disagreement or divergent views. JTA and DENR agreed it was advantageous to hold round table events for two stakeholder groups:

- NT Government Department representatives
- members of the Mineral Council's NT Division.

3.2.4 Public submissions

All interested members of the public were directed to provide feedback on the draft documents via email by Monday 3 December 2018. In addition to the Minister's media release on 4 October announcing the public consultation period, DENR advised several key stakeholders via email. On 16 November, DENR sent an email reminder to all key stakeholders of the deadline for submissions. DENR acknowledged all written submissions as they were received, and JTA reviewed each submission to capture feedback and enable personal responses from DENR to each submission author at the conclusion of the public consultation period.

3.3 Assessment methodology

This was a qualitative engagement program, focused on enabling the collection of constructive feedback on the draft EP Legislation. This section details JTA's methodology for the assessment of stakeholder feedback.

3.3.1 Interview data

Initial data was generated from stakeholder interviews. Notes were made during each interview and documented. The resulting 'contact reports' recorded information which was either in response to set questions (e.g. stakeholders views on current or draft legislation) or was raised independently by the stakeholder as a specific concern. The completed contact reports were then sent to the stakeholder, so they could verify the accuracy of the account. Some stakeholders declined this opportunity.

During the transcription and review process, codes were assigned to the data. All contact reports were then read again, and codes were collated into themes and sub themes. A spreadsheet was developed that helped to illustrate how often the different themes/sub themes were raised in the interviews. Comments were also included to give more detail and enrich the qualitative nature of the data.

3.3.2 Submission data

The second set of data came from 33 submissions received as part of the public consultation period. It is noted that 18 of the 33 submissions were received from stakeholders who had previously been interviewed. In addition, 178 submissions were identical form letters.

A preliminary scan of submissions established that the primary issues raised were of a similar nature to those identified in the stakeholder interviews so that the same coding/theming process could be applied.

All submissions were read through (some multiple times) and a second spreadsheet was developed. Some of the submissions were quite technical and detailed in nature with questions and recommendations included, so a third document was produced to collate and capture specific feedback on individual sections of the draft legislation.

3.3.3 Assessment of findings

The data from interview and submission spreadsheets were used as tools to identify the main issues/opinions which have been identified and addressed in this report. JTA has not attempted to verify the accuracy of statements or data provided, merely to collate and report it.

4.0 Findings

JTA's assessment methodology (refer section 3.3) focused on identifying common themes from stakeholder views supplied in interviews and via submissions. The themes and sub-themes are grouped in four sections, with the order reflecting the weight of opinion presented through the stakeholder engagement program and public submission process:

- widespread support for reform
- the draft EP Legislation needs significant improvement
- five major areas of concern
- other stakeholder concerns

4.1 Widespread support for reform

A clear majority of stakeholders support reform of the Territory's environmental management framework. Most stakeholders cited specific examples where the existing legislation and regulation has 'failed the NT', particularly in terms of environmental and social outcomes. Port Melville and the McArthur River Mine were raised repeatedly as recent examples of the need for reform.

Stakeholders are 'generally happy' to see the Territory moving towards 'a tighter framework that gives investors and community confidence'. Many stakeholders agree this reform is a long time coming and that 'urgent action' is required.

Stakeholders agree there should be:

- a revamp of current environmental legislation
- recognition of the 'NT difference' with legislation that is fit for purpose
- tighter definitions to remove 'grey areas' and subjectivity
- clear guidance on the environmental approval process
- consistent application of legislation and regulation
- adequate resourcing from government to enact and enforce reforms.

4.1.1 Existing legislation is weak and outdated

Some stakeholders describe the existing legislation as weak, deficient and 'decades behind best practice'. Current licence holders cite experiences where weaknesses in the legislation allow subjective interpretation and inconsistent application of regulation, including the inclusion of legislation from other jurisdictions.

4.1.2 Approval timeframes are a real concern

Approval timeframes are a concern for all stakeholders, with industry seeking faster approvals and most other groups seeking longer, more flexible review timeframes.

Industry stakeholders are frustrated by long approval timeframes. They say 'approval timeframes have blown out to an average of nearly a year, when in most cases they should be a maximum of 6-8 weeks'. Some said project approvals in the NT take 50% longer than in Western Australia and that second level approvals are 'woeful': *It can take months for a minor approval. DENR gets nervous and won't make a decision. It is completely unworkable.*

Speaking from a very different perspective, a number of stakeholders are concerned that existing timeframes do not enable genuine engagement with Aboriginal people and remote communities, and may have unintended negative consequences:

- *People want things to move along quickly, but rapid development can be to the detriment of the environment, particularly in remote areas where the current laws are not even enforced.*
- *The NT needs to address the practical challenges and find an effective method for engaging with Aboriginal communities.*

4.1.3 Support for reforming the NT EPA

Many stakeholders welcome reforms to the NT EPA as the peak body for environmental regulation within the Territory. Stakeholders say people don't respect the NT EPA and feel it cannot be trusted. Stakeholders simultaneously criticised the NT EPA for holding up industry and for apparently 'approving everything' (i.e. refusing to refer proposals to EIS on grounds that are 'disturbing').

Concerns about the NT EPA focused on its historical performance in relation to:

- inconsistency in decision making
- inaccessibility of the board, particularly given most members are not local
- NT EPA's lack of independence, given it is resourced by DENR and board members are political appointments
- NT EPA being a 'toothless tiger' whose recommendations can be overturned (e.g. Maryfield Station).

Commenting on draft EP Legislation's proposed reforms of the NT EPA, stakeholders say:

- *You can't have a board of six decision makers. It is not creating good decisions. NT EPA should have an advisory role, not an EIS role. They cannot be trusted to do a good job.*
- *What we need is a complete overhaul and re-evaluation of the EPA - it needs to be constructed again and staffed solely with people that live here, have their livelihoods, reputations and possibly relatives to defend and live up to.*

4.1.4 Current assessment process lacks clarity

Stakeholders agree the existing *EA Act* has a lot of grey areas and that this results in uncertainty about what is required. Many say the pathways from the Notice of Intent to either the Public Environment Report (PER) or the Environmental Impact Statement (EIS) are ill-defined.

Industry advocates say the lack of clarity increases timeframes and costs for proposed developments, with *terms of reference that are very random and proponents spending big dollars to demonstrate no risk*. They say the PER is not being used and proponents are being forced into 'unnecessary' EIS processes.

4.2 The draft EP Legislation needs improvement

Many stakeholders praise DENR for the work undertaken to date in addressing the need to reform environmental legislation for the Territory and some stakeholders are

optimistic that the draft EP Legislation is a step in the right direction. However, the majority of stakeholders have concerns with the drafts as they stand. Concern ranges from relatively minor suggestions for improvement to calls for the NT Government to drop the new legislation altogether and focus instead on better administration of the existing *EA Act* and *EAAP*.

Stakeholder comments range from very negative to very favourable:

- *The proposed EP Act is not required and should not be introduced.*
- *Better off retaining the old legislation.*
- *Existing legislation is less complex administratively than what is proposed.*
- *The draft Bill is very clunky for this stage of the process.*
- *The architecture is sound, but the devil is in the detail.*
- *The language throughout the document is inconsistent.*
- *This is a very ambitious legislation program for the NT Government.*
- *This is a huge advance on the current legislation.*
- *The proposed EP Act will bring a major improvement. It is much better, modern legislation, consistent with other jurisdictions and should be put in place as quickly as possible.*
- *Congratulations on putting together what is close to nation/world leading legislation.*

The overriding sentiment is that there is a lot of work to do to meet stakeholder expectations for the draft EP Legislation.

4.2.1 Support for Territory-specific legislation

Stakeholders want the new EP Legislation to be tailored to the NT context, rather than replicate generic legislation from other jurisdictions. Stakeholders suggest the draft Bill (and not the Territory environmental objectives) should explicitly describe values such as:

- Aboriginal connectivity to the land
- protection for current and future generations
- balancing economic development with environmental protection.

Several stakeholders say the draft Bill has nothing in it to recognise the 'NT difference':

- *The draft provides a great framework, which would be respectable elsewhere, but there are unique circumstances in the NT that need to be considered.*
- *The NT difference should be captured in the values and Territory environmental objectives, which are still not finalised and look like a cut and paste from Western Australian legislation. Protecting the rights to Aboriginal land should be in the Bill, not objectives.*
- *Government has no understanding of intergenerational equity in the NT context.*

4.3 Five main areas of concern

Assessment of input from interviews and submissions highlighted five key areas of stakeholder concern. These are presented in order of the frequency the concerns were raised. Sub-themes are listed under each of the five key themes to provide further explanation.

4.3.1 Resourcing the legislation is critical

Without exception, stakeholders identify resourcing as the major concern for any new EP Legislation in the Territory. Primarily this relates to human resources but it also refers to the need to ensure integration among NT Government Departments, develop guidelines and other supporting material, establish support systems and provide training for staff, proponents and community stakeholders. Enforcement is also singled out for special attention in the area of resourcing.

Some industry stakeholders go so far as to say that DENR would be 'better off retaining the existing legislation and doing a better job of administering it'.

Stakeholders say:

- *The bottom line is that the NT Government is not sufficiently resourced (both in numbers and skills) to handle even the existing legislation.*
- *The current Government is incapable of resourcing, supervising or setting up support structures. Words in the Act are very different to behaviour on the ground.*

DENR needs appropriate resources

Stakeholders are very concerned about the NT Government's ability to provide adequate and appropriately skilled people to resource the draft EP legislation. This was a consistent and insistent view that related to every aspect of the proposed legislation including its development, implementation, compliance monitoring and enforcement as well as the development of IT and other support systems.

Many feel this requires more effort than simply seconding resources with subject area expertise into DENR from other departments (such as DPIR), which they say are already under resourced and 'losing staff' as the government 'continues to downsize'. Some suggest the NT Government invest in a skills audit to identify gaps and ensure DENR officers at every level have the required experience and training.

Several stakeholders commented that proposed changes required skill sets that currently do not exist within DENR. An example that appears repeatedly in stakeholder feedback regards the evaluation of social, cultural and economic impacts. Stakeholders expressed concern that the departmental staff lacked appropriate qualifications to make informed assessments. This is despite the fact that the current definition of 'environment' already includes references to social, cultural and economic aspects of human surrounding and that the draft EP Legislation seeks to formalise existing administrative protocols in statute (such as seeking comments and advice from other government agencies):

- *... 'sustainable development' traditionally has been considered as having three pillars: social, economic and environmental. That means the three should equally inform good decision-making. However, the life cycle of impact assessment*

outlined in the reform documents is subsumed into a department and ministry that have the natural environment as their primary focus and no staff qualified to assess non-environmental impacts.

- *The regulator has no experience in social/cultural impacts. People in the senior ranks can have a sensible conversation in this space, but not at officer level..*

Stakeholders also call for the NT Government to ensure it employs people with the right attitude; to ensure public servants at all levels are confident and focused on solutions, rather than political expediency:

- *Although the NT is still relatively new to development, it is less risk averse than elsewhere and has a 'can do' culture of working to get an outcome rather than shutting down developments.*
- *DENR representatives are not confident regulators. They don't stand behind the legislation. There's a sense their actions were politically motivated; driven by concern about public perception.*

Cultural change and interdepartmental collaboration vital

Stakeholders say that cultural change is required to effectively implement the draft EP Legislation and ensure an integrated approach across all NT Government departments. They welcome improvements to the existing 'silo culture', where departments operate in isolation.

- *Sounds like DENR will become a new mega department. There must be cross-fertilisation to break down silo mentality. It is an important process to root out institutional corruption and build an effective culture to resource the legislation and regulate.*
- *Tighter control is needed as there has been so much inconsistency over time and between departments.*
- *Fully resourced and well-situated official expertise will be critical, with a preference for trans-disciplinary collaboration where all relevant experts collaborate with each other across their disciplines into the entire assessment and approval process.*
- *The culture within DENR is inflexible. We want flexibility and a scientific approach. We struggle with the mentality that regulations are sacrosanct.*

NT Government representatives agree:

- *We need to generate a culture change to deliver the legislation. We can look at internal procedures to work better together.*

Territory needs support systems and quality baseline data

Stakeholders from disparate viewpoints agree the NT Government must invest in systems to support the implementation of the draft EP Legislation and develop reliable baseline data to support good decision making. This applies equally to regulators and proponents who, under the new legislation, will assume responsibility for referrals:

- *The fundamental problem is that there is no baseline data. This must be fixed. Under the precautionary principle of the Environment Protection and Biodiversity Act 1999 (EPBC Act (i.e. if you don't know, don't proceed), there is no rationale for development in the NT because there is no baseline information to make decisions about environmental impacts.*

- *Business needs certainty, but this will not be provided by the draft legislation alone. It has to be supported by better systems.*
- *We need better information systems and frameworks for collecting data. If the new legislation captures more operators within the space, hopefully our knowledge will grow.*

Several environmental practitioners and advocates decry the lack of a comprehensive cross-departmental mapping and information database. They want the Government to develop quality systems for cataloguing baseline environmental data for the Territory. They feel that a central, searchable database will help proponents and regulators make better decisions and remove current uncertainty and inconsistency.

Training needed to enable compliance

Stakeholders want the NT Government to provide training and build capacity within the NT EPA, relevant departmental staff, proponents and key stakeholders to ensure a 'collective understanding' of the new legislation. Specific training is recommended for departmental staff at officer level, who have responsibility for implementing the legislation and explaining it to others. Stakeholders also call for the development of clear guidance materials to ensure agencies provide the right information to the Environment Minister and NT EPA.

- *The regulator needs decent people with a level of pragmatism.*
- *We deal with officers who mediate between our experts and the (NT EPA) Board and who need a grounding in the relevant bodies of knowledge in order to ensure there is no miscommunication.*
- *Need to get operational people involved early so we can be practical, rather than rely on sophisticated legislation, especially given the constant turnover of staff at officer level.*
- *DENR must ensure councils understand their obligations under the new legislation. Training must be provided in a way that is appropriate for large, remote regional councils.*

Extra enforcement must be resourced

Stakeholders welcome additional regulatory controls as a way of encouraging 'best practice' and 'weeding out the cowboys' (i.e. unlicensed operators). Many stipulate that enforcement is crucial and must be resourced adequately and consistently if it is to be effective.

- *Effective enforcement by regulators is critical to the success of this legislation.*
- *Lack of resources will affect DENR's capacity to enforce and regulate.*
- *We have real concerns about DPIR people moving into DENR, particularly those who have a reluctance to enforce legislation.*
- *The NT Government must ensure there are adequate resources to enforce the new legislation. Councils (local government) are not resourced to do this.*

4.3.2 Consultation should be prescribed in the draft EP Legislation

A substantial number of stakeholders note consultation is 'absent' from the draft EP Legislation, even though it is referred to in fact sheets summarising changes from the old legislation:

- *Fact sheet 2 says the draft legislation ‘Provides for greater public participation opportunities’. How? Other than the ability for judicial review (and is that really participation?), what is being offered beyond what is already involved in environmental assessment processes?*

It should be noted that the current legislation does not require *any* consultation although the administrative procedures provide for a limited public consultation process. The new legislation essentially formalises increased opportunities for consultation in statute.

The primary concerns with the new legislation are about visibility (i.e. that it is very difficult to find *any* reference to consultation in either the Bill or the Regulations, and that consultation is not prescribed to meet the Territory’s needs).

There is clearly a level of distrust and cynicism about consultation being omitted from the draft Bill. Several stakeholders say they prefer to see requirements for consultation spelled out in the Act rather than in Regulations. There was general awareness that it was much easier to make changes to the Regulations at any time, as opposed to Legislation.

Many stakeholders want the draft EP Legislation to explicitly prescribe consultation requirements and cater for the NT context, especially for Aboriginal people and other ‘frontline’ communities outside Darwin, Alice Springs and Katherine. Many call for longer consultation timeframes to foster meaningful dialogue and feel that online publication limited to English excludes a large proportion of the population.

Conversely, some industry stakeholders called for DENR to ‘resist community engagement requirements’ because companies need to manage their own engagement: *The new legislation should encourage collaboration between proponents and potential objectors/impacted communities.*

Industry stakeholders are concerned that longer procedural timeframes will be followed by lengthy consultation requirements.

While stakeholders recognise the benefit of increased consultation, many say they are poorly resourced in terms of staffing, time, money and expertise and they call on the NT Government to support stakeholder participation:

- *If there is to be increased public scrutiny and involvement, the government needs to ensure councils have adequate resources to participate. Regional councils cannot participate if they are required to spend limited resources to travel to municipal areas for meetings. Not all stakeholders have access to the web.*

Consultation with Aboriginal people is crucial

Many stakeholders say the draft EP legislation fails to specify consultation with Aboriginal people:

- *It’s high time we properly learnt from our First Nations mob who KNOW that caring for country is not optional. Please add in pathways for the blackfella ways both in how assessments are made and in how mobs are consulted and really listened to.*
- *There is no mention of Indigenous consultation, not even token.*

- *The legislation is missing the specifics of Free Prior and Informed Consent that establishes bottom up participation and consultation of Indigenous groups at the very beginning of a project/development.*
- *There need to be specific requirements to consult with NT's diverse Aboriginal communities, beyond the land councils, whose role is focused on Native Title rights. Individuals and communities are alienated by land councils. There needs to be a process to talk to Aboriginal people properly.*
- *There need to be opportunities for Aboriginal people to have substantial input into issues/projects that affect their communities.*
- *There needs to be a more appropriate timeline for consultation with traditional owners and more consideration of the extent of impact, rather than just focusing on traditional areas.*

Aboriginal groups agree the draft EP Legislation is lacking in terms of consultation with Aboriginal people:

- *There isn't anything in the draft Bill that obligates proponents to consult with Aboriginal people. The inclusion of Territory objectives and changes to the EPA role are good, but if there is no clear obligation for proponents to consult, then it doesn't bode well for Aboriginal people having a say.*

4.3.3 Regulatory burden threatens the NT economy

Although stakeholders accept the need for regulation and many are very familiar with the requirements of the NT's existing regulatory regime, industry stakeholders hold grave concerns that the current draft EP Legislation will drive investment out of the NT. Industry advocates say the regulatory burden of the draft EP legislation is not what the Territory needs, especially during an economic downturn. They call for the NT Government to use the Bill as an investment driver and make it easier for proponents to make investment decisions. Prime concerns are the lack of certainty and clarity about the assessment and approvals process, duplication and conflict with other legislation, the time and cost for approvals and the increase in 'green tape'.

Stakeholders say that while they agree with the NT Government's intention to protect the environment, they are concerned that over-regulation (i.e. over and above what is already required in the NT) will "kill industry":

- *The regulatory burden of the new legislation is another nail in the coffin and a job killer for the Territory. There is a poor economy, job losses and population reduction, and the answer is more regulation, more approvals, more costs and more threats of penalties?*
- *This Bill takes the Pepper recommendations and applies them across all industries. This exposes our members and all other industries to economic stifling. The proposed timeframes and administrative burden may accumulate to a point where they result in sovereign risk for proponents.*
- *Over the last 10 years, rule changes have created uncertainty. The NT fares badly on investment attractiveness and it is a tough place to invest.*
- *People get nervous that there will be constant change; that there will be no consistency to enable investment that requires a 15-year return on investment.*
- *Money follows the easiest path. The NT Government should not create barriers to investment. If investment is seen to be difficult, lots of potential investment could be dissuaded.*

Stakeholders across industry and government call for balance in the legislation:

- *We do not want an increase in red tape. It's a matter of balancing uncertainty with certainty, and clarity with complexity.*
- *The draft legislation needs to protect the environment, promote trust and confidence, encourage responsible development and foster investor certainty.*
- *The NT needs legislation that is an economic and environmental enabler.*
- *If the NT gets this legislation right, it will mean security for both environmental groups and also for industry.*

Provide a clear process to deliver certainty

Industry wants certainty in the process of environmental assessment and approval so that investor confidence can be restored in the Territory.

- *The original purpose of changing the EA Act was to reform the process. The sequence of events is not described in the draft act, so to some extent it seems to miss the point.*
- *The lack of certainty of process in the draft legislation is troubling and if it is not addressed future opportunities for the Territory will be missed and many known potential projects simply stop.*

Stakeholders want a clear chain of responsibility within the NT Government: *DENR should work with other departments to produce one flow chart that covers everything that needs to be done and who for, throughout the entire approvals process.*

Remove conflict and/or duplication and clarify approval hierarchy

Project proponents want assurances that there will be no conflict or duplication with other legislation and that there is a clearly understood hierarchy for approvals among NT Government Departments and Commonwealth agencies:

- *The reforms were supposed to stop fragmentation and duplication.*
- *Will proponents need to get a Federal and Territory environmental approval as well as development approval?*
- *There will be a disconnect if subordinate or inter-connected legislation (such as the WMPC Act and Petroleum Act) are not linked correctly.*

There is concern that the current regime, which supports concurrent approvals, will not be viable with project or development approvals and environmental approvals issued by rival politicians:

On the basis of the same information you could have one Minister saying yes for a project, and the Environment Minister saying no. This could be embarrassing for the NT Government and industry will have a problem.

Reduce regulatory burden to minimise cost and delay

For industry stakeholders, 'delay is death'. Many are concerned that the draft EP legislation imposes additional direct and indirect costs (including regulatory complexity and longer approval timeframes) that could deter investment. In addition to concerns about increasing the quantum of regulation, industry is frustrated that DENR has 'cherry picked' legislation from other jurisdictions.

- *EA Act is 13 sections and EAAP is 16 sections. EPA (draft Bill) is 269 sections and EPA Regulations (draft Regulations) are 213 sections. They are difficult to intuitively read and understand with lots of extraneous material.*
- *The decision-making process looks long-winded with a lot of steps. It can take up to 190 days for a proponent which is a bloody long time – and that's if the process is smooth.*
- *DENR should stop cherry picking from other legislation in other jurisdictions as it is counterproductive.*

Some stakeholders query whether DENR has undertaken a formal cost impact assessment of implementing the new legislation.

4.3.4 Definitions must be tightened

A common criticism of the draft EP Legislation is that terms/concepts/principles need to be clearly defined and understood to ensure consistency and prevent subjective decisions and costly court cases:

- *If there is room for subjectivity, then the decision depends on the person and their politics.*
- *DENR needs to provide proponents with guidelines that give clear meaning to the definitions in the draft legislation.*

At the same time, some caution against being too specific: *It is extremely unwise to define these terms as they are so context specific. Every single word gives a defendant or an applicant a loophole/technical argument through which they can argue the case.*

Clarify what is meant by 'significant environmental harm', 'significant impact' and 'major consequence'

There is widespread concern about the definitions for 'significant impact', 'significant environmental harm' and 'major consequence'. Stakeholders want a clear understanding of what is considered 'significant' or 'major', with the definitions tightened to clearly establish where the bar is being set. Industry stakeholders largely want to see the bar set quite high so that the focus on environment impact assessments are on the greatest risks. Other stakeholders want to ensure the bar is low enough to protect the environment adequately.

Some are concerned that without further definition, it will be left to the NT EPA and/or Environment Minister to determine when an impact or environmental harm is deemed to be 'significant'. However, under the new legislation the EPA must provide a written reason for the decision.

Stakeholders want DENR to set guidelines for Section 10 in particular (meaning of significant impact), including whether the definition of 'impact' is limited to the area that is directly affected, or whether impacts outside the project will also need to be considered.

Stakeholders say:

- *The Bill should have lists where major consequences are explicitly defined (per the EPBC Act). It is currently too open and lacks clarity.*

- *It needs to be revisited to capture more impacts. The bar has been set too high. Under the draft, 20,000 hectares of land clearing still won't need an EIS.*

Reconsider use of 'potential'

Federal Government officials say that the use of the word 'potential' is problematic because it increases the scope of what is considered to be a significant impact. They favour the narrower term 'likely' which appears in the *EPBC Act*. It should be noted however that 'potential' is how the current NT legislation is interpreted and applied and is not inconsistent with other jurisdictions.

Align ESD principles with other jurisdictions

Stakeholders wholeheartedly agree that the Territory should embrace ESD principles to 'lead to good environmental outcomes for future generations'. However, many stakeholders call for ESD principles to be aligned with those in other jurisdictions, namely the Commonwealth *EPBC Act* and the Rio Declaration on Environment and Development (1992).

- *The term ESD in the legislation is defined without full regard to development rights. The principle, as it was adopted in the Rio Declaration, actually provides: 'The right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations'.*
- *The principle of intergenerational equity is a very important concept, but there is no explanation as to how it is going to be measured.*

Clarify the extent of environment

Stakeholders largely support the definition of 'environment' in the draft EP Legislation, noting that it is consistent with ESD principles and 'human-centric'. However, there was concern about how the definition will be applied in practice (i.e. balancing biophysical, economic, cultural and social aspects), how 'people' are considered in relation to the 'environment' and where Aboriginal understanding of the environment will be included:

- *How far does it go? How do you balance environmental impact against economic benefits?*
- *People should be considered as part of the environment rather than as something separate.*
- *When considering Aboriginal land proponents will need to draw on the Aboriginal understanding of physical, biological and economic aspects as well as cultural and social aspects when trying to define these aspects and how they may be affected and repaired.*

Expand what is considered an action

Stakeholders want clarity about what is considered an action under the draft EP Legislation. Some say the existing definition needs further explanation while others want to see it broadened:

- *It seems insufficient that there are no definitions for the terms that describe an action (i.e. project, development, undertaking). What is not an action?*
- *The definition of action needs to capture passive releases to the environment.*
- *The definition is too restrictive. It should include policy, program or plan to provide flexibility over time.*

4.3.5 Further detail needed on proposed reforms

Many stakeholders say the draft EP Legislation has insufficient detail to enable stakeholders to provide meaningful comment. Some feel it was premature for DENR to release the draft EP Legislation before an appropriate level of detail was available. This relates to the provision of supporting material such as guidelines and guidance notes as well as the completion of the NT Government's internal assessment of DENR's Regulation Impact Statement.

Stakeholders say the omission of key details makes it hard to properly assess the legislation, contributes to uncertainty and 'puts a handbrake on investment':

- *There is a lack of detail in areas where detail is particularly important.*
- *The new draft has room for ambiguity and irregularity. On the legal front, this could cost the NT Government and proponents a lot of money.*

Stakeholders want further detail on a range of elements included in the draft EP Legislation, namely:

- interaction with other legislation
- Territory environmental objectives and values
- triggers for referral pathways
- terms of reference
- financial provisions
- timeframes
- offsets framework
- transitional arrangements.

Clarify relationship with other legislation

Many stakeholders are concerned about how the new EP Legislation will interact with other legislation within the Territory and with Commonwealth legislation, such as the existing Bilateral Agreement with the *EPBC Act*. In the Territory, this includes legislation currently being reformed, such as land clearing guidelines, water licensing and the *Petroleum Act* and accompanying regulations, which is being handled by the Northern Territory Department for Primary Industries and Resources (DPIR).

The interrelationship of legislation relevant to fracking is of particular concern:

- *ALEC's worst fears are that petroleum activities including fracking are not administered under the draft legislation.*
- *The draft legislation is designed to be broader, but the scale of fracking is big and should be captured in environmental legislation?*

These stakeholder concerns were made despite DENR representatives making it clear on many occasions during stakeholder meetings that proposed fracking operations which had the potential to cause significant environmental impact would be covered by the draft EP Legislation. However, there is concern as to whether in Stage 2 of the reforms the environmental effects of the petroleum industry will be included in the same way that the environmental impacts of mining are going to be included. There is anxiety amongst some NGOs that it will remain under the *Petroleum Act* through the Petroleum Environmental Regulations.

While some stakeholders are keen to see the Federal Government 'stepping back' from environmental approvals under the *EPBC Act*, others strongly feel the Federal Government should remain actively involved in the Territory:

- *Issues such as land clearing and climate change are of national importance and should be managed by the Federal Government with stricter laws in place. The Commonwealth shouldn't step back from its environmental responsibilities in the Territory.*
- *Both the Federal and NT governments have a role in environmental management. The only reason the Port Melville situation was picked up was the Federal Government got involved.*

Territory environmental objectives and values need more thought

Stakeholders want further detail and consideration of the concept of Territory environmental objectives and values. In short, stakeholders struggle to understand how the objectives and values fit into the legislation given they are being developed at the same time as the legislation that defines them. There is confusion over their purpose and a range of views regarding whether they should be subordinate to the legislation (as they are currently), embedded within the draft Bill or located in the draft Regulations.

Stakeholders say:

- *They are still being settled and seem likely to be defined very broadly. The lack of specificity can make accountability harder to achieve.*
- *The objectives of the Territory and the NT EPA are going to be different. The new ones will be what we need to use and the Board (of the NT EPA) will need to pay close attention.*
- *They seem to be all things to all people and run the risk of limiting what is considered an impact. It is putting the cart before the horse.*

Several stakeholders see real value in their development:

- *Local Traditional Environmental Knowledge (TEK), which is well-developed internationally as a concept... needs to be legislated. Objectives and values are a good opportunity.*
- *There is keen interest in the consultations and process to identify Territory Environmental Objectives and Values because they may defend a sound overview about development, in contrast with past situations where strong-minded developers pushed their own barrows.*

Detail needed on triggers for referral pathways

Stakeholders observe that while the section on triggers is quite lengthy, there is no detail around triggers included in the draft EP Legislation. They call for guidelines to be produced urgently to provide further information:

- *Stakeholders need more detail to understand what triggers an EIS, if proponents are responsible for referrals.*
- *In the case of an EIS, if the trigger is biophysical how do you balance social/cultural/economic impacts?*

Some say the concept of triggers is an improvement on the current notion of 'thresholds' but others suggest the legislation should involve values-based triggers. Views are mixed on whether triggers should be defined in the Bill or the Regulations.

Terms of reference need further work

Stakeholders note that further detail is required on terms of reference included in the draft Regulations. Proponents and regulators want DENR to consult with industry and other stakeholders to develop standard terms of reference before the draft EP Legislation is introduced to the Legislative Assembly.

- *We are happy that the terms of reference will focus on the potential for significant impact, but there is a lot of detail missing.*
- *I find it odd that a proponent can suggest its own terms of reference, even if the NT EPA is not bound by it. What is the rationale? What problem is it trying to solve?*
- *Terms of reference should deal with critical issues to be examined, not general issues and unnecessary studies or consultants' reports.*
- *The development of any standard terms of reference should be an internal process (i.e. not prescribed in the Regulations).*
- *Provisions should be made for site specific Terms of Reference which include the real issues each proponent potentially has on the environment and not standard ones applied across all industry projects.*

Explain financial provisions

Industry stakeholders want further detail and clarity around the basis of financial provisions proposed in the draft EP Legislation (i.e. environmental protection bond, levy and fund). Some fear the provisions duplicate what proponents already pay under other legislation. Others suspect it is 'revenue raising' on the part of the NT Government.

Stakeholders say:

- *The concepts of bonds and levies (more tax) are further disincentive to get projects up and yet another example of the government adding burden on to business.*
- *There is no history of terrible environmental impacts in the NT that can justify big bonds.*
- *New additional levies need to be isolated for the industry with a low cost, high transparency framework in place.*
- *More detail is needed on what the (environment protection) funds will be spent on, how funds will operate, recovery of funds and the role of government.*
- *This appears to be a back door requiring industry to fund research that the government should pay for.*

Maximum timeframes need to be clarified

In the main, stakeholders welcome prescribed timeframes within the draft EP Legislation, describing them as 'a giant leap forward'. However, industry stakeholders want clarity in terms of the regulator's obligations:

- *There are frequent references to minimum days/time periods but not to maximums.*
- *DENR works to minimums. Even though the legislation has a minimum of 20-30 business days, there is no maximum, so proponents have to guess whether their application has been approved.*

- *Legislating time limits on responses from the regulators will clarify and improve the assessment process.*

Offsets need further detail

Stakeholders note that the regime for offsets has not yet been determined and want DENR to provide more information about the proposed offsets framework referenced in the draft EP Legislation. While there is support for the use of offsets, particularly within the affected region, there is a recognition that 'like-for-like' arrangements used in other jurisdictions are not possible in the Territory. Stakeholders suggest that the consideration of offsets in the design phase could offer 'credible and viable offset activities' that build capacity in local communities and provide employment opportunities.

Stakeholders say:

- *Offset policy should be best practice and promote quality, integrity and diversity.*
- *Offsets must be delivered locally. This is partly a way to address the resource curse where local harm is not perceived to be matched by local benefit.*
- *Local governments can be seriously impacted when locally situated projects fail to contribute to or stimulate regional economic development and there is no improvement to the social fabric.*
- *Approval conditions and offset efforts should be designed to bring opportunities for the people experiencing the development to be involved and employed in mitigating it.*
- *It is a huge issue, particularly in terms of fracking.*

Transitional arrangements must be clarified

Environmental licence holders are particularly concerned that transitional arrangements are 'currently absent from the legislation'. They note they are not detailed beyond the generic provisions of the draft Bill and that the section in the Regulations is entirely blank. Stakeholders want clarity on how existing licences will be transitioned, how project approvals currently underway will be handled and whether existing projects will be caught by the new laws.

Stakeholders say:

- *If approvals have been granted under the former regime, how will this be managed?*
- *The next point of decision-making in the approvals process will be the switchover. But this is another part of the legislation still lacking detail.*
- *Last time existing projects got caught by the new laws. Which projects get grandfathered? What is the cut-off point?*

4.4 Other specific stakeholder feedback

Several stakeholders provided very detailed feedback on the draft EP Legislation, with specific recommendations or comments on individual sections of the draft Bill and draft Regulations. This feedback has been collated in Attachment A.

In addition to the five main areas of concern described above, stakeholders shared their views on several other aspects of the draft EP Legislation, as summarised below.

4.4.1 Merits review has divided and united NT stakeholders

Stakeholder groups are polarised on the issue of merits review appeal rights, with the weight of opinion falling evenly between those in favour and those opposed. While half of the stakeholders agree with the repeal of merits review appeal rights, there is a united sense of frustration across all stakeholder groups that the NT Government's decision was poorly handled.

Stakeholders call for merits review appeal rights to be reinstated

Many stakeholders are 'disturbed' and 'troubled' by the NT Government's repeal of merits review appeal rights during a public consultation process. They say it has diminished trust in the Government and made its commitment to the Hydraulic Fracturing Inquiry and consultation on the draft EP Legislation seem disingenuous:

- *It's not the best way to imbue the process with accountability and trust.*
- *The timing of the announcement just serves to completely undermine the trust in the consultation process.*
- *The Government's retreat from including merits review in the draft Bill is pathetic, particularly when the consultation process had only just begun.*
- *It gives the impression of parallel and unseen communication and influence, between Government and private actors, outside the declared consultation process.*
- *Power is very much with the mining industry, not the Government.*

These stakeholders, including some industry stakeholders, want merits review appeal rights reinstated with open standing:

- *Merits review provides scrutiny and rigour. It has a real, positive impact.*
- *We are less concerned than others about open access merits review as we have come to believe the added work can lead to better outcomes.*
- *The repealing of the merits review was incredibly disappointing. Environment Centre NT doesn't intend to accept the decision and will fight to overturn it or at least find a compromise.*
- *The NLC will insist that standing to seek reviews of environmental assessment decisions be available to land councils, native title prescribed bodies corporate and registered native title claimants who may be awaiting a decision on their native title claims.*

Some stakeholders, including industry proponents, cite examples from other jurisdictions to show that merits review appeal rights are often used by proponents who disagree with a regulator's decision:

- *From previous experience in Western Australia, proponents were often the ones to use merits review. Merits review was a strong tool for the proponent and was often used to apply leverage.*
- *In NSW, over 95% of merits reviews are brought by proponents and not just vexatious third parties. This affects the ability of the regulator to do its job properly if the proponent is always challenging decisions and conditions.*

Industry is 'delighted' with NT Government's repeal of merits review

Most pro-industry stakeholders say they were initially incensed with the inclusion of third party merits review appeal rights in the draft Bill as they felt it would deter investment in the Territory, or be used to 'deliberately slow or stop approvals':

- *The NT population generally scares pretty easily and third party scare campaigns could derail mineral projects that have the potential to provide employment in large, remote Aboriginal communities.*
- *Industry is concerned that the Bill opens up the way for a proliferation of vexatious appeals that could slow or stall development.*
- *It raises risk in an already risk-susceptible environment. When considering a proposal, the uncertainty it creates can be enough to stop it from proceeding.*
- *Even when the Minister has approved a proposal, that approval can be appealed under merits review.*

They were subsequently 'delighted' with the NT Government's decision to repeal merits review within weeks of releasing the draft EP Legislation for public comment:

- *The government's decision to remove merits review from the draft legislation (Stage 1) is an excellent outcome. There are a lot of professional objectors in the NT. If the EPA is doing its job, the requirement for third party appeal should be mitigated.*
- *Merits review was really scary to industry. We were happy to see it addressed in the announcement but we will still get vexatious and trivial complaints.*

While the NT Government's repeal of merits review appeal rights made industry stakeholders 'much more comfortable', many agreed it was 'poorly done': *Political intervention at the eleventh hour makes people wonder what else is going to happen. It feels disingenuous to talk about genuine consultation.*

4.4.2 Opinion divided on judicial review

As with merits review, stakeholder opinion is divided on the topic of standing for judicial review appeal rights.

Environment advocates call for open standing to be reinstated for judicial review and question the impact of the NT Government's decision to narrow standing (refer the Minister of Environment's media statement on 30 October 2018):

- *The laws must include open standing for judicial review appeals.*
- *These appeal rights are critical for ensuring accountable decision-making, acting as a safeguard against corruption and upholding the rule of law.*
- *With respect to judicial review, we are concerned that the proposed approach to standing (i.e. available if a genuine/valid submission has been made) will narrow what is currently available under common law.*

While industry representatives are happy that the Minister has narrowed standing for judicial review, they remain concerned that there are still too many opportunities for appeals from third parties who may 'abuse the process':

- *We are concerned that, even with the Minister's statement, the proposed wording in this Part will create a litigious environment in the Territory because it remains too*

broad and potentially allows appeals from parties who have no substantive standing. It is not clear what is meant by anyone who has made a 'valid and genuine submission'.

- *Open standing provisions for both administrative and judicial review will only further add costs and delay.*
- *Restricting access to judicial review will reduce the opportunity for groundless legal challenges to delay development projects that have met all regulatory requirements, without compromising the ability of genuinely interested parties to pursue their legitimate interests.*

4.4.3 Stakeholders split over the new environmental approval

Stakeholders are evenly split over the concept of giving the Environment Minister power to grant, refuse, transfer, suspend and revoke environmental approvals.

Environmental advocates and practitioners see the move as a 'vast improvement' over the current approach (i.e. where the responsible Minister has primacy), and 'hope that DENR will be a better department as a result':

- *EDONT strongly supports that, for the first time, an environmental approval will be issued by the Environment Minister, on the advice of the NTEPA. It is a significant step towards transforming environmental protection in the Northern Territory and 'breaking down' the inherent conflicts of interest that are at the core of the current approach.*
- *The implementation of a standalone environmental approval issued by the Environment Minister, with conditions attached to the approval and enforced by the Department of Environment and Natural Resource, is the core of this Bill to be celebrated and fully supported.*
- *Having the Environment Minister give an environmental approval removes the concern of 'sectoral capture' where the industry regulator and advocate are the same entity.*

Among supporters of the initiative, there are misgivings about the new power, especially given the NT Government's decision to repeal merits review appeal rights. These stakeholders want transparency for decision making, particularly in terms of publishing the reasons for decisions (as required under the draft EP Legislation). In particular, they want assurance that this would be a full and proper disclosure of reasons instead of vague references to legal obligations being met. Others want assurances that the Environment Minister cannot be directed by another Minister under the draft EP Legislation.

Other supporters want to ensure there is appropriate industry expertise to support the Environment Minister and say that seconding experts from other departments into DENR would be helpful. Some want to ensure the Environment Minister is able, and encouraged, to consult with other Ministers and the NT EPA in their deliberations:

- *It is recommended that the draft legislation be amended to require the Minister for the Environment, as responsible Minister for the Act, to consult with other Ministers, who in the opinion of the Minister for the Environment may or would likely hold views relevant to the proposal under consideration, especially when these projects are of strategic significance to the Northern Territory.*

Those opposed to the initiative are concerned that the Environment Minister could have ‘veto power’ and could reject a proposal regardless of whether they have consulted the relevant industry Minister. They want final environmental approval returned to the sectoral or industry Minister with NT EPA providing advice and input. Comments included:

- *The fear is that ideology takes over and there won't be balanced decisions.*
- *The proposed transfer of the decision-making process for approval from the relevant minister to the environment minister is not supported - decision-making authority vested in the Minister responsible for the sector in which the project lies, with consideration for the recommendations of the NT EPA and Minister for the Environment.*
- *To grant whatever random person gets the environment portfolio to make whatever decisions they desire is not best practice for defending the awesome environmental assets we Territorians possess.*

4.4.4 New referral pathways get a mixed review

Stakeholders agree that it is likely the new system will result in ‘excessive referrals’ as proponents seek to protect themselves. Some stakeholders praise the proposed tiered referral pathways in the draft EP Legislation as a ‘great improvement’ that gives ‘greater clarity’ and ‘investment certainty’. Others struggle to understand what is new:

- *There is already a strata assessment system but it is not used. There should be much better use of the PER vs EIS system but PERs have all but been abandoned when there are many instances where they could be used.*

A range of stakeholders, including licence holders, disagreed with the decision to require proponents to assume responsibility for referrals:

- *We have some concern that to rely on a proponent to decide whether to commence the environmental assessment process could lead to a repeat of the Port Melville problem.*
- *Proponents are strongly inclined to characterise their projects as not needing environmental assessment with its considerable delay and expense for them.*

4.4.5 Cautious support for strategic assessment

On the whole, stakeholders are generally in favour of the concept of strategic assessment as a means of stimulating new industries or development in specific regions. It is seen as a particularly useful tool for the NT Government and its agencies to act as a proponent for a given region or activity. Support is often qualified as stakeholders want further detail on how such assessments would be regulated and applied.

- *There are pros and cons. Government should take a role and get active in managing what's happening in a given region.*
- *Strategic assessments have potential benefits, but only after careful land use planning beforehand.*
- *The essential elements of strategic assessment should be set out in the Act as it is too easy for key elements to be changed by regulation.*

- *We acknowledge it offers the opportunity for comprehensive consideration and approval to be given to a new industry or activity on a region-wide basis. However, it's fairly clear this approach could assist development of the fracking industry.*

4.4.6 Notification and publication to encourage participation and transparency

Stakeholders are keen to see improvements in notification and publication processes so that participation is encouraged and enabled. This includes calls to go beyond the 'archaic' gazette system and reliance on public advertising.

Stakeholders representing peak bodies want more efficient processes so they can better serve their members and constituents. While they called for caution in too much reliance on online systems, they would like to see a central location (online) for notification and publication, preferably servicing all NT Government departments. Some call for a 'one stop shop' to serve as the interface between government and stakeholders.

Stakeholders also want better transparency for decision-making and prescribed timeframes for publication of decisions, submissions and notification of proposals.

Comments include:

- *Mere public advertising of proposals is insufficient.*
- *More thinking is needed about whether 'publication' is online only.*
- *It is important that the government commit to putting documents online at least five days after a decision.*
- *Having the discretion on when to release submissions is a moral dilemma that the EPA is best left not having. Transparency is better served if submissions are made public during the assessment period, not at the end as is currently the case.*
- *Notification should be at the notice of intent stage, before things slip down the cracks.*

4.4.7 Cumulative impacts must be assessed by government

While many stakeholders support the assessment of cumulative impacts in the new legislation, some say there are problems with placing responsibility for cumulative impacts on proponents and that the approach should be 'flipped on its head'. The feeling is that the NT Government, not individual proponents, should be responsible for assessment as it is the only body with access to all the required information.

Stakeholders said it was 'inefficient' for proponents in a given area to duplicate the process of gaining a full understanding of cumulative impacts. Some, drawing on personal experience, went so far as to say that it was impossible for individual proponents to obtain relevant information from other proponents or operators as it was deemed confidential.

4.4.8 Climate change policy considerations should be incorporated

Stakeholders want climate change to be included in the Bill as an overarching principle for decision makers when determining an environmental approval.

- *Given the existential threat to humanity from climate change, we are disappointed there is no explicit mention of this in the objects or ESD principles.*
- *The NT is very vulnerable to climate change and the NT needs to lead the way.*

5.0 Consultation Evaluation

5.1 Methodology

During interviews, JTA gauged stakeholder views on DENR's consultation processes for the review of the draft EP Legislation. Our findings are detailed below.

5.2 Findings

5.2.1 Level of engagement

Given the significance of the proposed EP Legislation, public participation in the engagement program was relatively low, but representative of the NT population with a total of 61 submissions received and 35 key stakeholders interviewed. Most of the detailed feedback came via 27 submissions from peak bodies and other representative organisations. Around half of those organisations were specifically targeted during the interview process coordinated by JTA. DENR received 11 unique submissions from the general public as well as 23 form letters that were an exact copy of one of those submissions.

When approached, all but one of the 36 key stakeholders were able to participate in interviews with JTA. However, very few had reviewed the draft legislation beforehand. Some had read the NT Government's fact sheets or sections of the legislation and used that information as the basis of their comments. As such, many comments from interviews were general in nature and described needs and preferences, rather than specific changes to the draft EP Legislation.

Many stakeholders expressed a desire to contribute to the public submission process but indicated they would be seeking an extension of time given stretched resources and competing demands on their organisations as a result of the NT Government's extensive reform agenda. Around half of the targeted key stakeholders did provide detailed submissions as part of the consultation process, identifying specific concerns and describing proposed changes to the drafts in detail.

The level of engagement is not considered to indicate a low level of interest in the review of this significant reform of environmental legislation for the Territory. Rather, it is considered to be a symptom of the volume of consultation currently underway.

5.2.2 Stakeholder views on DENR consultation

Stakeholders are fatigued by the NT Government reform agenda

All stakeholder groups were concerned with the amount and scale of reform underway, particularly within DENR. They felt too much was being handled concurrently with the bulk of consultation concentrated on a handful of stakeholders.

There is a disturbing amount of NT Government reform underway right now, with waste reform to come. Apart from multinationals, no player has the resources to properly respond.

Stakeholders want more time

Stakeholders criticised the time allowed for consultation on such significant legislation (i.e. eight weeks for public submissions). They also criticised the Government's plan to

introduce the legislation to Parliament in March 2019, given many Territorians take long leaves of absence over the Christmas/Summer holidays.

Stakeholders want more opportunities for input

Several stakeholders called for public meetings or forums, especially outside Darwin, to ensure individuals had an opportunity to contribute their views.

Aboriginal people need to be consulted

Stakeholders called for genuine consultation with Aboriginal people, not just representative bodies, including face-to-face interaction with translators:

Stakeholders want information sessions

Stakeholders called for face-to-face briefings by DENR to answer questions, educate the public and raise the level of understanding of the concepts in the legislation and its potential impacts.

6.0 Conclusion

This project has presented a number of challenges, not least of which have been the timeframe, diversity of opinions around the draft Bill and Regulations, and need to represent all the views honestly, comprehensively and respectfully. However, the challenges have been more than balanced by a group of concerned and intelligent stakeholders who made themselves available at relatively short notice, provided advice and views that were often blunt but always constructive and polite.

To a large extent the quality, depth and courtesy of the opinions and recommendations proffered were influenced by the officials from DENR who were responsible for the framework, content and objectives of the consultation program.

It is hoped that this consultation program will result in equity of treatment for both present and future Territory generations, and that an increase in economic development is tempered with ecological sustainability and Aboriginal connectivity with the land.