

Response to submissions on draft environment protection legislation for the Northern Territory

February 2019

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Introduction

In October 2018 the Northern Territory Government released a draft Environment Protection Bill and draft Environment Protection Regulations for public consultation.

The key elements of the draft legislation were the establishment of:

- a framework for an improved environmental impact assessment system
- processes for an environmental approval to be issued (or refused) by the Minister for Environment and Natural Resources
- a general duty for persons to have an impact on the environment to take measures to avoid or minimise (or otherwise remediate) impacts, and
- a framework to enforce the general duty, and compliance with the environmental assessment and approval system.

Thirty five organisations participated in interviews and 33 written submissions were received. In addition, 178 people submitted a pro-forma submission arranged by the Environment Centre of the Northern Territory.

This report summarises the key issues on the draft legislation identified in the submissions and the proposed changes or response to the issues raised. It does not address all comments made on the draft legislation.

This report should be read in conjunction with the *Stakeholder Engagement Report on Draft Environment Protection Legislation for the Northern Territory* which provides a general overview of the public consultation process and discusses the key matters raised by respondents.

Issues by theme

Objects of the Bill

Summary of comments

In general the objects specified in the Bill were supported however some submissions suggested these should be expanded, particularly to include recognition of the role of the First Nations and Indigenous people in the conservation and ecologically sustainable use of natural and cultural resources, and in decision making processes around them. One submission strongly argued that the Objects should better capture the intent of the reforms to integrate all environmental approval and regulatory responsibilities into one piece of legislation (bringing to an end the current fragmentation and duplication caused by the spread of responsibilities across multiple pieces of legislation).

It was also suggested that the objects could include the importance of public participation in environmental decision making and the requirement to address/ respond to climate change.

Response

The objects of the Bill will be revised to provide explicit recognition of the rights and interests of Aboriginal Territorians and will be reviewed to ensure that they accurately reflect the purpose of the legislation in delivering improvements to the impact assessment system and delivering better environmental outcomes for the Territory.

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It is not intended to specifically reference climate change in the objects of the Bill as this is one of many environmental issues that should be considered as part of a rigorous assessment process.

In addition, provisions relating to the purpose of environmental impact assessment (section 59 in the draft Bill) will be revised to ensure that these reflect requirements for appropriate consultation with affected communities, including Aboriginal communities.

Definitions and Important Concepts within the Bill

Summary of comments

Many submissions raised concerns about definitions and important concepts in the Bill, with many submitters recommending these be amended to provide additional clarity. Some submissions also identified additional definitions that could be included to improve understanding of the draft Bill.

In particular, there was concern that the definition of 'action' is too broad to be meaningful with a suggestion that the definition be rationalised to a minimum number of descriptors. It was also suggested that the definition of action be inclusive of its interaction with the environment. One submission recommended that the definition of action should also capture passive releases to the environment.

The definition of 'environment' also received many comments. One submission argued that the definition is outdated and referred to the definition of 'environment' in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as an alternative that should be adopted.

One submission was critical of the definition of the environment being inclusive of elements beyond the natural environment. Another submission suggested that all elements included within the definition of the environment should also be defined, referring to the definition of 'economic' in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) Policy Statement on the definition of 'Environment'. Another submission recommended that the definition be clarified to reflect Western Australia (which links the extent of the social environment to how it directly affects or is affected by changes in the biophysical environment).

Many respondents raised concern with the concept of 'significant environmental harm' and 'significant impact'. A couple of submissions argued that 'significant environmental harm' and 'significant impact' should not be defined in the Bill stating that it was for the Northern Territory Environment Protection Authority (NT EPA) and/ or the Minister to determine when the impact or environmental harm is significant. Section 124A of the Planning and Development Act 2007 (ACT) was referenced as an example providing a clearer definition of significant adverse environmental impact as well as Australian jurisprudence.

Some submissions also raised concern that some important definitions were provided in the Regulations rather than Bill (for example, Fit and Proper Person).

Response

The Definitions and Important Concepts will be reviewed and where possible revised to address the various concerns raised. Definitions will be balanced in terms of where flexibility is needed, and where precision is required.

Principles of ecologically sustainable development

Summary of comments

A number of submissions raised concern about the language used to describe ecologically sustainable development (ESD) principles. Concerns related to a departure in wording or exclusion of principles from nationally accepted principles as well as the inclusion of the principle of economic competitiveness. There was concern that a change in wording resulted in a change of policy intent behind the principles and placed unrealistic obligation on proponents. The absence of the principles which speak to public participation as well as the right to development were noted.

A few submissions noted the absence of specific reference to the rights and needs of Aboriginal people, the principles of Free, Prior and Informed Consent and Australia's commitments to international principles such as the UN Declaration of the Rights of Indigenous Peoples.

The intent of ESD (the equal weighting of environmental, economic and social elements in decision making) was noted by a submission which stated that the Bill currently focuses on protecting the natural environment with negligible focus on economic, social and cultural elements.

A number of submissions also raised concerns that the Bill required decision makers to 'consider' but not 'apply' the principles of ESD in their decision making. These submissions also raised concerns about a provision exempting decision makers from demonstrating how principles have been considered. This concern stems from a perceived lack of transparency about how decisions are made by the NT EPA and it was argued that demonstrating the application of ESD principles in decision making would support increased accountability in the decisions made about a proposed action.

Response

The Bill will be amended to define the concept of 'ecologically sustainable development' and to ensure that the wording of the principles is more consistent with wording in the Rio Declaration. The proposed principle of economic competitiveness will be deleted while additional principles addressing requirements for decision making to be evidence-based, science-based, risk-based, and ethical, and supporting public participation and accountability in decision making will be included.

The Bill will also be amended to require decision makers to 'apply' ESD in their decision making. Decision makers will not be required to state in the reasons for decision how ESD was considered or applied. Requiring decision makers to explicitly discuss how each principle has been considered in their decision making detracts from consideration of environmental outcomes and instead focusses decision making into a process. This is particularly prevalent where principles are not relevant to a particular decision that is being made. Additionally, the Bill establishes a system that ensures transparency and accountability in all decision making.

Environment protection policies

Summary of comments

Provisions allowing the Minister to declare environment protection policies were generally recognised as being a useful component of the suite of proactive measures contained in the draft legislation aimed at protecting the environment. However a number of submissions identified that a lack of explicit detail regarding the proposed use of the policies and their likely content, and limited criteria provided to inform the Minister's decision making about the declaration of these policies resulted in ambiguity and subsequently generated concerns.

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Response

It is envisaged that the majority of matters that would be covered by environment protection policies relate to the establishment of measures or limits for the generation of wastes and pollution and particular management standards for certain matters of concern, such as impacts from noise.

Matters relating to the establishment of environment protection policies will be deferred until the next stage of the reform program, and the Bill and Regulations will be amended to remove the relevant provisions at this time.

General environmental duty

Summary of comments

Some submissions supported the inclusion of the general environmental duty, recognising it as part of the suite of protective measures. However other submissions raised concern with the interaction between this duty and the similar duty under the *Waste Management and Pollution Control Act*. There was also concern that the duty within the Bill was more wide-ranging than currently contained in the *Waste Management and Pollution Control Act* and that it placed the onus of proof with the polluter.

Response

The wording of the general environmental duty reflects best practice and is consistent with the intended breadth of matters to be regulated under the Bill – as compared to the duty under the *Waste Management and Pollution Control Act* which is limited to wastes and pollution matters consistent with the breadth of that Act.

Although the general environmental duty is an essential element of environment protection legislation, it is not a key feature or requirement of the impact assessment and environmental approval system. This matter will therefore be deferred until the next stage of the reform program which will enable concerns about potential duplication between the new duty and the duty under the *Waste Management and Pollution Control Act* to be addressed.

Environmental objectives and triggers

Summary of comments

Most submissions were hesitant in providing support for the provisions establishing environmental objectives and referral or approval triggers without being provided with example or drafts of the proposed objectives and triggers. The purpose and content of the proposed environmental triggers and environmental objectives was unclear to many as was their use in the environmental assessment system. Accordingly, submissions were unwilling to support provisions that enable the declaration of objectives and triggers in the absence of understanding the detail of the nature of the objectives/ triggers.

It was argued that the current timeline for introducing the revised legislation should be substantially extended, to allow appropriate consultation to work out details regarding the nature of the triggers and how they would operate.

A number of submissions questioned the utility of Territory Environmental Objectives arguing they unnecessarily complicate matters. They suggested the process would be better supported with the inclusion of decision making criteria for the NT EPA, to increase public accountability on how a judgement of potential significance of impact has been made.

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One submission questioned the role of approval triggers (i.e. triggers that require an impact assessment to be conducted and an approval to be granted for the project to proceed) within a risk based system identifying that this form of trigger is prescriptive and not responsive to the specific risks posed by individual projects.

Response

A significant criticism of the current system is the lack of certainty about when a referral is required. There is a balance to be made between providing certainty by prescriptively identifying a range of “triggers” in the legislation, which runs the risk of missing something of importance, and flexibility by enabling the NT EPA to make the determination. The legislation takes a middle ground approach by establishing powers for the Minister to make declarations (in consultation with the NT EPA and community) in the Gazette while also providing the general test of ‘significant impact on the environment’.

The Bill will be amended to provide additional information explaining the purpose of triggers, the circumstances under which they may be declared, and the consequence of the trigger on the requirement for a person to refer a project. Provisions enabling the Minister to declare ‘approval triggers’ will be removed.

Environmental protection declarations

Summary of comments

A number of submissions supported provisions that would allow declarations of protected environmental areas and prohibited actions as part of the suite of proactive measures for protection of the environment. However, most submissions identified concerns about the apparent discretion of the Minister to make declarations, with a number of submissions stating that the provision needed to be supported by additional criteria to guide use of the Ministerial power. Other submissions suggested that it would be more appropriate for these types of declarations to be included within legislation, such as regulations.

Submissions also identified some ambiguities in the provisions such that it is unclear when a temporary declaration may be made and whether there is only a single declaration in respect of a particular area.

Response

The Bill will be amended to remove ambiguities about when the Minister may make a temporary environmental protected area declaration and to impose time limits on the application of a temporary declaration. The power to make permanent declarations of protected environmental areas and prohibited actions will be transferred from the Minister to the Administrator.

Environmental impact assessment process

Summary of comments

A large number of comments focussed on those provisions in the draft Bill and Regulations establishing the impact assessment system.

Comments generally focussed on:

- impact assessment processes and the relationship between the draft Bill and draft Regulations

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- timeframes and consultation periods
- the responsibilities of the proponent in the impact assessment system
- provisions relating to strategic impact assessments
- provisions relating to obligations for proponents to refer 'variations' of their approved or assessed projects to the NT EPA for assessment.

Additionally a number of submissions made specific recommendations for improvements to the drafting of the legislation to provide additional clarity and certainty.

Impact assessment processes generally

Submissions generally supported proposals to implement a more tiered approach to impact assessment., although the appropriateness to undertake an assessment based upon only referral information was questioned by one of the submissions. Many submissions commented that there was no supporting information in the draft legislation to assist in understanding the distinction between the methods of environmental impact assessment or how the NT EPA would determine which assessment method would be used in a particular circumstance. Submissions suggested additional criteria should be included to guide this decision.

There was a misunderstanding by a number of submissions on the process (and purpose) of the NT EPA "accepting" a referral at the commencement of process, with many concerns relating to a perceived exclusion of public participation from early decision making about requirements for impact assessments and a lack of transparency in decision making by the NT EPA. It was argued that maximum transparency would be achieved if the statement of reasons prepared by the NT EPA included a documented process of key evaluation criteria and decisions and was provided to the proponent.

Other submissions suggested that the consultation process currently proposed in the Bill supported a bias in the process towards the proponent.

Some submissions also identified that provisions enabling the NT EPA to reconsider the method of assessment were too broad and would create uncertainty, while other submissions raised concerns that it did not appear possible for the NT EPA to terminate an assessment process even where the project requiring assessment did not resemble the project originally referred due to the number of 'minor' variations submitted to the project.

The inclusion of matters to be included in an environmental impact statement were largely supported with suggestions that the matters also include obligations to assess the impacts of climate change as well as cumulative impacts. One submission disagreed and argued it was too prescriptive and reductionist to the practice of environmental impact assessment.

Some submissions questioned the provisions in relation to the proposed Proponent Initiated Environmental Impact Statement process stating that they were unclear and potentially excluded public participation opportunities.

A number of submissions raised concern with provisions allowing the NT EPA to consult with the proponent and statutory decision-makers on the draft Environmental Approval and Assessment Report, arguing that this invites undue influence in decision making. Some submissions raised concern about the NT EPA's ability to seek independent review at the cost of the proponent arguing that there was potential for the NT EPA to charge the proponent costs it has incurred without any consultation with the proponent.

Submissions also questioned the purpose of standard terms of reference and expressed concern about the proposed process to develop them.

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Some submissions also commented that the legislation had an apparent focus on process and raised concerns that it appeared overly prescriptive. Other submissions identified a 'disconnect' between the Bill and the Regulations and an opinion that clauses in the Regulations should be contained in the Bill.

Timeframes

There was a mixed view on public consultation periods within the impact assessment process with some submissions stating further opportunities for comment should be incorporated into the process while others raised concern of 'over consultation'. Similarly, some submissions argued for longer consultation periods while others stated proposed timeframes were overly long. There were also varying views between submissions as to whether consultation timeframes should be expressed as minimum or maximum timeframes, with those arguing for maximum timeframes doing so on the basis that this provides greater certainty and reduces delays.

Some submissions noted that not all decision making points appeared to be associated with a timeframe for decision making leading to uncertainty and potentially delays.

Responsibilities of proponents

A number of submissions stated that the proponent's obligations in respect of environmental impact assessment, and particularly in relation to community consultation, was unclear.

Strategic impact assessment

Submissions sought clarity over the intent of strategic environmental assessment and its distinction from project based assessment. Submissions also spoke to who could make a referral for a strategic environmental assessment (proponent vs NT EPA vs anybody). There was concern by some submissions that proponents would use strategic environmental assessment provisions for 'bulk-approval'. The role of the 'approval notice' for strategic proposals was unclear to many.

Project variations

Submissions focused on the process as well as intent of the provisions to vary actions. Submissions communicated that it was unclear when a variation needs to be submitted and noted that variation provisions appeared to introduce different 'tests' to those required for initial referrals (i.e. whether the project had a potential significant impact on the environment or met the requirements for a referral trigger). It was recommended that there should be transparent and objective criteria for the NT EPA to make a determination on a variation.

Response

A number of amendments will be made to the legislation, primarily the Regulations, to address the various matters raised by the submissions. These will include:

- clarification about 'acceptance' provisions and the circumstances under which the NT EPA may refuse to accept a referral
- additional criteria to assist the NT EPA to make decisions on the appropriate assessment method
- clarification and the imposition of limitations on the NT EPA's powers to reconsider the assessment method during an assessment process
- revisions to the proposed process for a Proponent Initiated Environmental Impact Statement to clarify that this process retains the same level of public participation as the standard environmental impact statement process

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- removal of matters relating to the establishment of standard terms of reference as these can be addressed by the NT EPA administratively
- clarification of provisions relating to the termination of assessment processes
- revisions to maximum decision making timeframes to address concerns that lengthy timeframes may cause delay to project approvals and to ensure that all decision making steps are accompanied by an appropriate timeframe. Minimum timeframes for consultation activities will be retained as these provide flexibility and enable the NT EPA to make risk based decisions on consultation requirements
- inclusion of additional provisions that articulate the responsibilities of proponents in the impact assessment system. These provisions will clarify that it is the proponent's responsibility to conduct appropriate consultation as part of designing any project, including an obligation to consult with Aboriginal communities in a culturally appropriate manner and to seek and present community information, including Aboriginal traditional knowledge, of the natural and cultural values of potentially impacted areas. These obligations will also require proponents to (as relevant) apply the principles of ESD and management hierarchies specified in the Bill
- amendments to consultation obligations placed on the NT EPA in respect of the draft environmental approval and assessment report. These amendments will retain provisions requiring the NT EPA to consult with decision makers and the proponent about a draft approval but will remove obligations to consult in relation to the assessment report. Retention of these consultation requirements is appropriate from a practical perspective
- revision of the provisions relating to strategic assessments to provide additional clarity about when these may be undertaken, the definition of 'action' in relation to these assessments and the link between strategic assessments and the assessment methodologies specified in the Bill
- amendments to clarify when a strategic assessment may be undertaken and the link between these assessments and the assessment methodologies identified in the regulations.
- amendments to provisions relating to variations to clarify that variations are subject to the same tests as other types of referrals (i.e. potential for significant impact on the environment or meets a referral trigger) and to improve the presentation of these provisions to provide greater clarity about their application.

Environmental approvals

Summary of comments

There were a number of comments in relation to the processes around granting or refusing an environmental approval.

Submissions were mixed in their comment on the introduction of an environmental approval. There was strong support for an environmental approval by some, whereas other submissions stated it was too much power to afford to an Environment Minister. Some submissions also sought additional clarification on the relationship between the environmental approval and other regulatory approvals, while others recommended the inclusion of provisions to ensure no decision-maker can make a decision prior to the Minister's approval that would have the effect of implementing the decision.

A number of submissions argued that the Minister should be required to consult with other relevant Ministers before making decisions, particularly for projects considered of strategic significance or

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for the NT Administrator endorsement of a decision to refuse to grant an environmental approval. Associated with this, some submissions questioned why the NT EPA should provide a copy of the draft approval to statutory decision makers and/ or the proponent before providing these to the Minister. One submission also queried why it was proposed the NT EPA be required to publish the draft approval along with the assessment report.

A number of submissions also raised concerns with provisions allowing the Minister to extend timeframes to make a decision on the grant or refusal of an environmental approval stating that these were unnecessary and a cause for additional delay, particularly given the Bill already included provisions that would result in the adoption of the NT EPA's recommendation in circumstances where the Minister did not make a decision within the required timeframe.

A couple of the submissions raised concern about the NT EPA providing advice of 'unacceptable impact' arguing it is a value judgement. There were questions about natural justice requirements where the Minister proposes to accept a statement of unacceptable impact. Other submissions were unopposed to this sitting with the NT EPA but recommended definition around 'unacceptable impact'.

The use and purpose of standard conditions for an environmental approval was questioned by a number of submissions which identified that their purpose was unclear and the process for their development unnecessary and that standardisation of conditions may inhibit conditioning for site specific/ project specific issues.

Response

The draft legislation contains requirements for the Minister to consult with other statutory decision makers before deciding to grant or refuse an approval.

Consultation with relevant statutory decision makers is also undertaken by the NT EPA during the environmental assessment process. The intent of the NT EPA providing a copy of the draft approval to statutory decision makers is to ensure relevant matters have been captured by the approval in a manner that best addresses the issue of concern – it is not a point of negotiation. The NT EPA is not required to accept a recommendation from a statutory decision maker, however it is required to provide copies of the submissions to the Minister. The purpose of this, as well as the subsequent publishing of the draft approval, is to provide transparency.

The Bill will be amended to clarify the relationship between the environmental approval and other regulatory approvals and to provide that the environmental approval takes precedence over other approvals.

The Bill will be amended to remove those provisions enabling the Minister to extend timeframes for making a decision following completion of the impact assessment process to address concerns about unnecessary delays in approval processes.

The Bill will be amended to clarify requirements for the Minister to afford proponents natural justice where the Minister proposes to accept a statement of unacceptable impact.

Provisions relating to the development of standard conditions will be removed as these matters can be addressed administratively.

Financial provisions

Summary of comments

A number of submissions sought clarification about various financial provisions included in the draft Bill including those associated with the introduction of fees, cost recovery arrangements, environmental bonds, levies and financial assurances as part of closure requirements.

Some submissions raised concern that 'chain of responsibility' provisions were missing from the Bill to ensure companies and/ or their 'related parties' bear the cost of managing and rehabilitating sites.

Fees and cost recovery

Some submissions raised concern about the NT EPA's ability to seek independent review at the cost of the proponent arguing that there was potential for the NT EPA to charge the proponent costs it has incurred without any consultation with the proponent.

General concerns were also raised about provisions identifying that fees may be charged under the legislation.

Environmental bonds

Concerns were raised about potential duplication between bonding requirements under the Bill and under mining legislation. Some submissions noted that the proposed environmental bond system did not explicitly displace the existing bonding system under the *Mining Management Act* resulting in concerns that environmental bonds may be charged even where a proponent already pays a bond for the same purpose.

Environmental protection levy and fund

A number of submissions sought clarifications about the role and proposed use of both the Environmental Protection Levy and the Environmental Protection Fund. Some submissions supported the financial provisions as part of the suite of protective measures, others were concerned about the cost imposition on proponents and the impact on future development.

Financial assurance as part of site closure

Clarification and explanation was sought regarding the proposed purpose of closure notices and their implications for landowners. There was concern raised about the requirement to provide a financial assurance as a condition of a closure certificate – many viewed this as double dipping given the requirements for environmental bonds and levies.

Response

A number of amendments will be made to the Bill to address the various matters raised by the submissions. These will include:

- amendment of provisions enabling the NT EPA to seek to recover costs from proponents to require the NT EPA to consult with the proponent before incurring such costs
- clarification that a proponent cannot be subject to two bonds for the same purpose under different legislation. A provision similar to section 128(2) in the draft Bill will be adopted. That section identifies that a levy is not chargeable where a person is subject to a levy under another act for a similar purpose

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- clarification that a condition that extends a bond beyond the period of the approval can only apply for the period that any post closure and rehabilitation monitoring is required
- deferral of provisions relating to financial assurances at site closure until a future stage of the reforms.

Provisions allowing for the introduction of future fee arrangements will be retained. Any fee proposals will be subject to additional, specific, consultation.

As part of its response to the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory, the Government has committed to introducing 'chain of responsibility' legislation. This matter will be pursued separately to reforms to the environmental impact assessment and approval process.

Review by the NT EPA and environmental audits

Summary of comments

Submissions queried review and audit powers being provided to both the NT EPA and the CEO. One submission recommended a new section enabling the NT EPA to direct the CEO to require and audit to be conducted to the satisfaction of the NT EPA to minimise duplication.

Submissions also raised concerns that the auditing powers were highly discretionary and that there did not appear to be any limitations on the exercise of those powers by the NT EPA or CEO.

Associated with this, some submissions queried the processes for registering and certifying auditors and environmental practitioners stating that these were extensive and unnecessary for a small jurisdiction and that it would be possible to rely on processes in other jurisdictions or existing certification schemes.

Response

The Bill will be amended to delete provisions allowing the NT EPA to conduct a review or require an audit will be deleted. The NT EPA has powers to review processes under its establishing legislation, the *Northern Territory Environment Protection Authority Act*. There will not be an additional section added enabling the NT EPA to direct the CEO as the CEO takes direction from the Minister.

The Bill will also be amended to clarify the circumstances under which the CEO may require an audit, which will include that the CEO believes or suspects on reasonable grounds that:

- an approval holder has contravened, or is likely to contravene, a condition of the approval, or
- a person has contravened, or is likely to contravene, another provision of the Act.

The provisions in the Regulations relating to registration and certification processes for auditors and practitioners will be simplified to enable the adoption of processes and registers from other jurisdictions or recognition of particular certification schemes.

Compliance and enforcement

Summary of comments

There were limited comments on compliance and enforcement related matters and these were generally limited to either providing specific improvements to the drafting or related to:

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- offences, penalties and criminal proceedings
- civil proceedings
- issues associated with taking actions in an emergency.

Offences, penalties and criminal proceedings

Many of the submissions identified concerns with the proposed offences and penalties specified in the draft Bill, with many submissions identifying that the offences did not appear to provide for a tiered system that reflected the seriousness of the alleged offending or the impacts to the environment. It was noted that all offences contained a high standard of proof ('recklessly engages in conduct') and that penalties were not specified which limited capacity for submitters to identify whether the penalty would provide an appropriate level of deterrence.

Some submissions raised concerns about provisions relating to the reverse onus of proof in relation to occupier and owner liability as well as the criminal liability of executive officers of body corporates.

Civil proceedings

Some of the submissions expressed concerns about the time period for seeking injunctions and who is granted standing. The statute of limitations of three years for a civil action to be brought against an operator was perceived as excessive and inconsistent with statutes elsewhere in Australia and overseas.

There was also concerns about the drafting of these provisions and the powers granted to the CEO to recover civil penalties by negotiation.

Taking actions in an emergency.

Submissions noted that CEO does not appear to have powers to take action in an emergency situation where an approval holder is complying with the approval but unexpected and unintended significant environmental harm is occurring which could undermine the purpose of the legislation and is contrary to good environmental outcomes.

Another submission noted that there appeared to be errors in the drafting of these provisions which limited emergency authorisations to situations where the authorisation would have a positive environmental outcome. As noted in the submission, it is likely that the grant of an emergency authorisation will be contrary to environmental protection outcomes in some circumstances.

Response

Offences, penalties and criminal proceedings

All relevant offence provisions contained in the Bill will be revised to provide for tiered offences and penalties that reflect the seriousness of the offending. They will range from reckless acts to strict liability offences.

Provisions reversing the onus of proof are considered appropriate for offences relating to harm to the environment and are consistent with national and international approaches.

Civil proceedings

The Bill will be amended to reduce the time period for seeking an injunction to 90 days from the date of the alleged contravention of the Act.

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It will also be amended to clarify that civil proceedings are a court process and not a negotiation by the CEO.

The standing provisions will be amended to limit standing to a person who is impacted by an alleged action or omission that contravenes, or may contravene, the Act

Taking actions in an emergency.

The Bill will be amended to give the CEO a time-limited power to issue an emergency environment protection notice where:

- an approval has been given
- the person is complying with the approval
- the action is seen to be causing significant environmental harm
- it is the reasonable belief of the CEO that urgent action is necessary for the protection of the environment and to meet the objects of the Act, and
- it is the reasonable belief of the CEO that there exists a ground for revocation of the approval in accordance with the Act.

The Bill will be amended to address the identified errors and to expand the grounds for granting an emergency authorisation to include an alternative ground of protecting critical public infrastructure.

Review of Decisions

Summary of comments

Submissions identified a range of opinions about the proposed review provisions included in the draft Bill.

Some submissions had concerns about the inclusion of merits review and the broad standing given to enable a person to seek a review.

Other submissions supported these provisions and communicated their opposition to the Acting Minister for Environment and Natural Resource's announcement that the provisions will be revisited and narrowed. It was argued that the regressive position on third party appeal rights undermines the rule of law and accountability. There was also a view that the Minister's announcement during the consultation period demonstrated a bias towards proponents and risked destroying community trust in the new legislation from the outset.

Response

The review provisions will be amended to limit review processes in the impact assessment and approval system to judicial review only. Standing will also be limited to the following persons:

- proponents
- persons directly affected by the decision
- persons who made genuine and valid submissions during the assessment and approval process.

Other matters

In addition to the key issues discussed in this report, respondents provided a number of general comments about the draft legislation.

Structure of the legislation

A number of submissions made comments about the structure of the draft legislation. Some submissions argued that too much detail was provided in the Regulations and would better sit within the Draft Bill. Other submissions argued differently, stating that the Bill was too detailed and it would be better to have detailed process descriptions in the Regulations.

Response

The structure of the legislation is a matter of Northern Territory legislative drafting practice.

Provisions allowing persons to be exempt from compliance with the Bill

The draft Bill contained a power to make a regulation exempting a person from compliance with the Bill or sections of the Bill which was highlighted as a concern by many submissions which argued that such a power undermined the purpose of the legislation.

Response

The Bill will be amended to delete this power.

Transitional provisions

A number of submissions sought an understanding of the proposed transitional provisions that would apply to projects currently under environmental impact assessment as these were absent from the consultation Bill.

Response

Transitional provisions will be included in the draft legislation. These provisions will transition projects currently under assessment into the new system at the next appropriate decision point. Such projects would be issued with an environmental approval. There is no intention to require projects that have completed an assessment process to seek an environmental approval.

The role of the NT EPA

A number of submissions made comments about the role of the NT EPA in the Territory's environmental management system, although only one submission addressed this specifically in terms of the legislation. That submission argued that the NT EPA should have a greater role in the environmental management system and considered that responsibilities allocated to the Minister under the new legislation should instead be allocated to the Minister.

Response

Government has considered the role of the NT EPA in the Territory's environmental management system and determined that the NT EPA can best contribute to the protection and management of the environment by focussing on matters of strategic importance to the ecologically sustainable development of the Territory. This includes undertaking impact assessments to advise on developments with potentially significant environmental impacts, providing advice on environmental

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protection and management issues, and conducting holistic and strategic reviews of the environmental management system. It does not include the more regularised and regulatory activities required to ensure 'day-to-day' environmental management is undertaken by proponents.

The draft legislation reflects the NT EPA's strategic role in undertaking strategic assessment and providing strategic advice to the Minister.

There is a deliberate separation between the NT EPA's strategic advisory role and the regulatory role of the Minister granting or refusing the environmental approval, which is consistent with the responsibilities of the Minister to be accountable to the community for decisions which affect the development of the Northern Territory.

Next Steps

Both the draft Bill and Regulations are under review to determine how to best address issues raised during the consultation period, where considered appropriate.

It is anticipated that a revised Bill will be introduced to Parliament in May 2019. The Bill will then be referred to the Public Scrutiny Committee for review. It is through this process that further opportunity is provided for the public to review and comment on the legislation.

At the completion of the Scrutiny Committee process a report will be tabled in Parliament of the findings of the review. The report will advise on whether the Bill should be passed and if further amendments are required.