

Fact Sheet 11: Outline of the draft environment protection Bill and Regulations

This overview has been prepared to assist readers to understand the structure, content and purpose of the draft environment protection Bill and draft Regulations. The guide should be read in consultation with the draft Bill and draft Regulations. Further detail on specific elements of the Bill and Regulations are contained in other papers in this series.

Draft environment protection Bill

Part 1 – Preliminary

This part provides for general matters associated with establishing the legislation and plays an important part in how the legislation is interpreted and administered.

Division 1 sets out the title of the Bill, when the Bill commences (which is the day, or those days, that are chosen by the Northern Territory Administrator), the objects of the Bill and definitions for various terms used throughout the Bill and Regulations.

Division 2 provides explanations of important concepts that are used in the Bill in order to help with interpreting and implementing the Bill.

Division 3 identifies how the Bill applies in the Territory and who is required to comply with the Bill. This includes Northern Territory Government agencies.

Part 2 – Principles of environmental protection and management

This part sets out decision making principles that need to be considered when different decision makers, including the Northern Territory Environment Protection Authority (NT EPA), Minister for Environment and Natural Resources (the Minister), and the Chief Executive Officer of the Department of Environment and Natural Resources (the CEO), when making decisions under the legislation.

Division 1 identifies the principles of ecologically sustainable development. These build on the principles contained in the National Strategy for Ecologically Sustainable Development (1992). These principles must be taken into consideration by a decision-maker whenever they are making a decision under this legislation.

Division 2 identifies management hierarchies for decision making and managing wastes. The waste hierarchy establishes a set of priorities for the efficient use of resources.

Part 3 – Environment protection policies

This part establishes that the Minister may make environment protection policies. Policies provide information, set standards and provide formal guidance to ensure compliance with the Bill in relation to:

- the general environmental duty (section 33)
- an environmental approval (Part 7)
- the duty to notify an environmental incident (Division 8, Part 11)
- duties prescribed by the environment protection Regulations.

Part 4 – General environmental duty

This part describes a general duty placed on a person (an individual or body corporate) to take responsibility in avoiding or minimising environmental harm resulting from an action. It sets out the obligations and measures to be taken if a person causes environmental harm, including obligations to remediate the harm and restore ecosystem functioning.

It includes offences for failing to comply with the general environmental duty.

This part reinforces the concept that everyone has a part to play in protecting our environment from harm.

Part 5 – Environmental protection declarations

This part allows the Minister to make a number of declarations for the protection of the environment and for the purposes of the impact assessment process.

Division 1 allows the Minister to establish Territory environmental objectives and declare environmental triggers.

- The Territory environmental objectives and the environmental triggers are referral pathways used to inform when an action is to be referred to the NT EPA for consideration under the environmental impact assessment process.
- The Territory environmental objectives are used to inform when an action is to be referred based upon its potential for significant impact.
- The referral triggers (activity-based and locality-based) set out those activities or areas where an activity is proposed that require a referral to be made to the NT EPA.
- The approval triggers (activity-based and locality-based) set out those activities or areas where an activity is proposed that must receive an environmental approval before proceeding.

The Bill outlines the processes that must be followed by the Minister before making, revoking or amending the Territory environmental objectives or an environmental trigger. This includes requirements for public consultation.

Division 2 allows the Minister to declare

- protected environmental areas
- actions or classes of actions that are prohibited.

This power allows the Minister to identify an area of major environmental importance in which development, or certain kinds of development, can or cannot occur.

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The Bill outlines the processes that must be followed by the Minister, including requirements for public consultation, before making, revoking or amending these declarations. The Minister may declare a protected area without consultation where warranted, and time is of the essence. These 'temporary' declarations may not exceed 2 years.

A proponent cannot make a referral for a proposed action that is located in a protected environmental area or for an action that is prohibited.

This division also states that the Minister cannot delegate these powers.

Part 6 – Environmental impact assessment process

This part establishes the environmental impact assessment process for the Northern Territory.

Division 1 outlines the purpose of the process, which is to ensure that actions do not have an unacceptable impact on the environment and that all actions that may have a significant impact on the environment are appropriately assessed, planned and conducted.

Division 2 allows the Minister to enter into co-operative assessment agreements. These agreements are designed to facilitate and streamline assessment processes across jurisdictions where multiple processes may apply. The Minister may make an agreement, provided that the intent of the Bill in terms of impact assessment is achieved, and that the outcome of the assessment is a report that meets specific criteria and on which the Minister can make a decision to grant, or refuse, an environmental approval.

Division 3 establishes the circumstances in which a person must refer an action to the NT EPA for consideration in the environmental impact assessment process. It also establishes powers relating to strategic assessments, and allows the NT EPA to issue a 'call in notice' for projects that, in the opinion of the NT EPA, should have been referred but were not.

Processes associated with making a referral to the NT EPA are set out in Part 4 of the Regulations. Processes associated with undertaking environmental impact assessments are set out in Part 5 of the Regulations while Part 7 of the Regulations identifies matters associated with variations to actions.

Division 4 provides for matters associated with strategic assessments. The Division allows a person to apply for an 'approval notice' which will allow that person to operate under an approval issued for a strategic assessment without being required to undergo further impact assessment.

Part 7 – Environmental approval

This part establishes matters associated with the Minister's decision, once an environmental impact assessment has been concluded, to grant, or refuse to grant, an environmental approval.

Division 1 relates to the environmental impact assessment process and requires the NT EPA to provide an assessment report at the completion of the process. It also provides that the NT EPA may provide the Minister with a 'statement of unacceptable impact' where it considers that the potential environmental impacts are unacceptable and cannot be further avoided or mitigated.

Division 2 provides for all matters associated with the Minister determining whether or not to grant an environmental approval. This includes whether the applicant for the approval is a 'fit and proper person' and the time in which the Minister must make the approval decision. The criteria for determining whether or not a person is a 'fit and proper person' are contained in the Regulations.

Division 3 provides for matters associated with the Minister's acceptance or refusal of a statement of unacceptable impact from the NT EPA, including the time in which the Minister must decide.

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Division 4 requires that an environmental approval be published. This contributes to transparent and accountable decision making.

Division 5 contains matters related to the Minister imposing conditions on an environmental approval while Part 6 of the Regulations establishes processes for creating standard conditions for approvals.

Division 6 identifies that an environmental approval authorises a person to take the actions specified in the approval in accordance with the conditions of the approval and any other requirements contained in the legislation.

Divisions 7, 8 and 9 contain matters associated with amending an environmental approval, suspending and revoking approvals, and transferring approvals respectively. These provisions are required to ensure the legislation is appropriately flexible to deal with changes in project ownership, project variations and so forth without compromising the integrity of the environmental approval.

Part 8 – Environmental offsets

This part provides that the Minister may establish an environmental offset framework and requires the Minister to maintain a register of any offsets.

Part 9 – Financial provisions

This part provides for environmental protection bonds, levies and funds. These tools are designed to ensure that the person undertaking a project is responsible for any environmental damage that may occur, and the costs of rehabilitating and remediating that damage.

Division 1 establishes the environmental protection bond framework. The Minister may require a person to pay a bond as a condition of the grant of an environmental approval. The bond may be reassessed or recalculated during the life of the project to ensure that it remains appropriate considering the level of environmental risks and impacts. The bond is repayable at the completion of the project and all associated remediation and rehabilitation activities.

Division 2 establishes a framework for environment protection levies. The Minister may require particular industries to pay a levy. The levy is not repayable.

Division 3 states that the Minister may establish environment protection funds to hold environmental bonds or levies. It also details the particular circumstances when the Minister can make use of the money in a fund and recover money expended from a fund.

Part 10 – Review by NT EPA and environmental audits

This part allows the NT EPA to review the environmental aspects of actions. This enables them to determine whether the forecasts of the environmental impacts of actions are accurate and gauge the effectiveness of the safeguards or standards put into place to manage those impacts.

It also allows the NT EPA and CEO to require a person to undertake an environmental audit, as well as providing for a number of general matters associated with audits. Part 9 of the Regulations establishes processes associated with the appointment of environmental auditors.

Part 11 – Enforcement

This part contains a range of provisions and regulatory tools designed to ensure that the legislation is complied with.

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Division 1 provides for matters associated with the appointment of environmental officers including their powers and some requirements on how they're undertaken. Environmental officers are empowered to investigate potential breaches of the legislation and enforce the legislation.

Division 2 establishes a system of environment protection notices. These notices may be issued by the CEO to secure compliance with the general environmental duty, the conditions of an approval or other matters that are identified in the regulations.

Division 3 allows the NT EPA to issue stop work notices. Stop work notices may be issued where the NT EPA is of the opinion that a project should have been referred for impact assessment but was not.

Division 4 and 5 establish a system of closure notices and closure certificates. The power to issue both closure notices and closure certificates sits with the Minister.

- Closure notices are notices that require a person that has completed a project to undertake continued monitoring and management action at the project location. A closure notices may be issued where there is a likelihood that the activity that previously occurred on the land may result in future contaminants if not appropriately managed. Old landfill sites are an example of where a closure notice may be appropriate.
- Closure certificates are certificates that can be issued at the completion of a project to say that all necessary rehabilitation and remediation measures have been implemented to the Minister's satisfaction. These certificates allow a person to sell or hand back land without incurring any further liability for remediation.

Division 6 establishes a system of enforceable undertakings. The CEO may accept an enforceable undertaking where a person has breached the legislation. The undertaking is where a person agrees to do or not do certain things and is used as a regulatory mechanism to bring the person back into compliance with the legislation.

Division 7 allows the CEO, in an emergency, to authorise certain actions that would otherwise be a breach of the legislation. A person that receives an emergency authorisation may still be required to pay a civil penalty for the action that required the authorisation or be given an environment protection notice.

Division 8 identifies that incidents that may result in material environmental harm (and which are not authorised by the Bill) must be reported to the CEO and establishes a hierarchy of reporting obligations. This division also states that a person must provide a report even if it may incriminate the person, though reports cannot be used as evidence against the person. Part 12 of the Regulations identifies the information that must be included in a report of an environmental incident.

Part 12 – Civil proceedings

This part establishes civil proceedings.

Division 1 identifies a number of matters associated with the seeking and granting of injunctions.

Division 2 establishes a civil penalties regime. This allows the CEO to recover a civil penalty from a person for certain offences under the Bill rather than commencing criminal proceedings. Civil proceedings must be commenced within 3 years of the alleged offence occurring.

Part 13 – Offences, penalties and criminal proceedings

There are a number of offences and penalties contained in different parts of the Bill.

This part provides for general offences that are necessary but not aligned with particular provisions within the Bill.

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It also establishes the liability of owners, occupiers and executive officers of bodies corporate for offences that may occur on the land that they own/occupy or by companies.

This part identifies that environmental officers may commence criminal proceedings, with the approval of the NT EPA or CEO as appropriate. It identifies that criminal proceedings must be commenced within 3 years of the offence occurring or coming to the attention of the CEO or NT EPA.

Part 14 – Review by Tribunal

This part establishes the powers for people to seek a review of decisions made by the Minister, NT EPA, CEO and environmental officers under the Bill.

It identifies that any person may commence proceedings in the Supreme Court challenging the legal process that was followed in making a decision. That is, it provides for 'open standing' for judicial reviews.

It also identifies those persons that may seek merits review of decisions. Merits review is where the reviewer (the Northern Territory Civil and Administrative Tribunal (NTCAT) for this Bill) considers whether the correct and most preferable decision at law has been made. Schedule 3 identifies which decisions can be reviewed by the NTCAT and who can seek the review. In most instances, there are a broad number of people who can seek the review*. In a few limited circumstances, the review process is limited to the person who is directly affected by the decision, for example, a person who applies to be an environmental auditor.

*The Northern Territory Government has announced its intention to amend this part in the draft Bill to only allow for judicial review of decisions by the NT EPA and the Minister in the environmental impact assessment process, with standing to seek a review limited to; proponents, those directly affected, and those who made a genuine and valid submission in the process.

Part 15 – General matters

This part sets out general matters that are required to implement the Bill. It includes delegations by the Minister and CEO and establishes public registers for documents prepared for, or under, the Bill.

This part also includes a power for the Minister to direct that certain information is provided to the Government. This is generally information collected during, or for the purposes of, impact assessments. It is designed to assist the Government to grow its environmental knowledge and make more information and data available to proponents, reducing imposts for the collection of data as part of impact assessment processes.

Part 16 – Transitional provisions

This part will establish transitional provisions. Transitional provisions are the provisions that will govern how projects that are currently undergoing environmental impact assessment, or which have complete the impact assessment process, will be governed and moved into the new legislative regime.

Part 17 – Repeal

This part identifies that the Environmental Assessment Act is repealed by the new Bill.

Schedules

There are three schedules which provide further detail on certain matters identified in the Bill.

Schedule 1 identifies those matters that must be included in a public register.

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Schedule 2 identifies those matters that must be included in an environmental offset register.

Schedule 3 identifies those decisions that can be reviewed by the NTCAT.

Draft environment protection Regulations

Part 1 – Preliminary matters

This part provides for general matters associated with establishing legislation.

It sets out the title of the Regulations, when the Regulations commences (which is the day, or those days, that are chosen by the Northern Territory Administrator) and definitions for various terms used throughout the Bill and Regulations.

Part 2 – Concepts in Act

This part provides detail about important concepts that are used in the Bill, including matters that should be considered in deciding if a person is a 'fit and proper person' to hold an environmental approval, and general information about the types of environmental impact assessments that can be required.

Part 3 – Environment protection policies

This part sets out processes associated with making, amending and revoking environmental protection policies.

Part 4 – Referral of proposed actions

This part sets out the processes for the NT EPA when it receives a referral from a person planning to undertake an action that may require impact assessment and an environmental approval.

Division 1 identifies that the part applies to project-based (standard) assessments and strategic assessments.

Division 2 sets out matters associated with receiving and accepting or refusing a referral, including timeframes for making a decision to accept or refuse the referral.

Division 3 identifies how a referral is to be managed once it has been accepted. This includes that the referral must be made publicly available, and timeframes for making a decision on whether assessment is required, and if so, the method or tier of assessment.

Under this Division, the NT EPA may, at this stage of the process, recommend that the Minister refuse to grant an approval. This 'early refusal' process is designed to streamline processes for actions which are clearly not acceptable.

Part 5 – Environmental impact assessment

This part establishes the processes associated with environmental impact assessments.

Division 1 identifies that the part applies to any impact assessment that is required under Part 4.

Division 2 provides for general information associated with impact assessments. This includes, for example, obtaining additional information to inform the assessment process, requirements for the

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NT EPA to publish any submissions received during the assessment process, and the termination of processes.

Division 3 identifies the process for an assessment on referral information. This method of assessment proceeds based on the referral information and any additional information that may have been provided by the person planning to undertake the action as part of the NT EPA's decision to accept the referral.

Division 4 identifies the process for an assessment by supplementary environmental report. This type of assessment is based on the referral information, any additional information that may have been provided as part of the NT EPA's decision to accept the referral, and an additional supplementary report prepared at the direction of the NT EPA to provide information that is required to complete the assessment.

Division 5 establishes processes for preparing terms of reference for environmental impact statement assessments and assessments by inquiry. It includes processes for preparing 'standard' terms of reference for particular industries or types of projects.

Division 6 establishes an environmental impact statement assessment (EIS) process. This type of assessment is based on the referral information, any additional information that may have been provided as part of the NT EPA's decision to accept the referral, a draft EIS, and a supplement.

Division 7 establishes the assessment by inquiry process.

Division 8 identifies matters associated with developing an assessment report, and a draft environmental approval or statement of unacceptable impact.

Each of these Divisions 2 to 8, include maximum timeframes in which the NT EPA must take action or make a decision. They also include requirements for public consultation on different assessment documents, and provide minimum periods during which the documents must be available for consultation activities.

Part 6 – Standard conditions of environmental approval

This part establishes processes for the development of standard conditions for environmental approvals, including public consultation requirements.

Part 7 – Variation of actions

This part establishes requirements for certain types of variations to projects to be submitted to the NT EPA for consideration in the impact assessment system.

Division 1 allows the NT EPA to ask for more information about the variation.

Division 2 applies to variations that are submitted to the NT EPA during the impact assessment process. It allows the NT EPA to suspend the existing assessment process while a decision is made on whether the variation requires further impact assessment or can be managed through the existing process. If necessary, terms of reference for an existing EIS or inquiry can be amended under this division.

Division 3 applies to variations that are submitted after an assessment report has been prepared but before an environmental approval has been granted. It allows the Minister to suspend consideration of the report and approval until the NT EPA has made a decision on the variation.

Division 4 applies to variations that are submitted after an assessment report has been prepared and an environmental approval has been granted.

All divisions require the notice of variation to be published and provide minimum periods during which the documents must be available for consultation activities.

Part 8 – Registration of environmental practitioners

This part sets out a registration scheme for environmental practitioners. It provides for applications for registration, renewal, suspension and revocation of registrations.

Part 9 – Registration of environmental auditors

This part sets out a registration scheme for environmental auditors. It provides for applications for registration, renewal, suspension and revocation of registrations.

Part 10 – Notice of environmental incidents

This part identifies the information that must be given to the CEO as part of reporting an environmental incident under Division 8 of Part 11 of the Bill.

Part 11 – Review by Civil and Administrative Tribunal

This part identifies that certain decisions made under the Regulations can be reviewed by the Northern Territory Civil and Administrative Tribunal. The specific decisions, and who can seek a review, are included in Schedule 1 of the Regulations.

Part 12 – Fees

This part states that Schedule 3 identifies the fees that are to be paid under the Bill and Regulations.

Part 13 – Transitional provisions

This part will establish transitional provisions. These are the provisions that will govern how projects that are currently undergoing environmental impact assessment, or which have completed the impact assessment process will be governed and moved into the new legislative regime.

Schedules

There are two schedules which provide further detail on certain matters identified in the Regulations.

Schedule 1 identifies those decisions that can be reviewed by the NTCAT.

Schedule 2 identifies fees that are payable for applications to be registered as an environmental auditor or practitioner or to renew a registration.