7 December 2018

Ms Jan Taylor
Principal
JTA Australia
GPO Box 3675
Darwin NT 0801

C/O email: environment.policy@nt.gov.au.

Dear Ms Taylor

Northern Territory Environmental Protection Bill

On behalf of the Association of Mining and Exploration Companies' I am pleased to comment on *Northern Territory Environmental Protection Bill*.

The following submission details Industry's most pressing concerns with the proposed legislation.

The Bill is a critical piece of legislation that will decide the investment attractiveness of the Northern Territory. Given the importance of this framework, AMEC is dismayed at the rush to draft and consult on this legislation.

It is a considerable irony that there has been a mere 12 weeks allotted to consult on legislation that will guide a process that is likely to take companies multiple years and substantial expense to navigate.

If you would like to discuss this further submission, please ask your office to contact myself or Neil van Drunen directly.

Yours sincerely

Warren Pearce
Chief Executive Officer

Northern Territory Environmental Protection Bill

Submission

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

December 2018

Prepared by

Association of Mining and Exploration Companies Inc (AMEC)
The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for hundreds of mining and mineral exploration companies throughout Australia.

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1. Industry Overview

As the peak national industry body for mining and mineral exploration companies, the Association of Mining and Exploration Companies (AMEC) represents over 275 companies around Australia and has over fifteen member companies who are exploring for minerals or looking to develop mines in the Northern Territory.

Currently, the mining industry contributes over $270 million, more than 34%, of the Territory's taxes and royalties. This makes mining the largest private sector contributor to the 2018/19 Territory Budget by over $30million.

In the near term the Department of Primary Industry and Resources lists potentially $6 billion worth of mining projects under consideration. This could generate over 4,000 jobs, as well as numerous other economic and social benefits, including greater royalties.

The mineral exploration sector is heavily invested. Mineral exploration expenditure increased by 43% in the Northern Territory during the 2017/18 financial year to $111.8m. This figure that does not include the Industry estimates that an average mineral exploration company spends a minimum of a million dollars per annum to maintain an office, staff and share listing before undertaking exploration activities.

This sizeable investment makes the final wording of the Environmental Protection Act critically important to AMEC members invested in the Northern Territory.

Industry has a range of concerns with the sweeping changes proposed to the environmental regulatory framework in the Northern Territory.

The submission is structured into three parts: the first covers the regulatory reform process so far; the second, specific concerns with the Bill; and thirdly, nonspecific concerns.

2. The Regulatory Reform Process So Far

Industry has several reservations regarding how the process to draft this legislation has been undertaken:

2.1 Scale of reform

Industry has expressed concern with the rapid development of this Bill which will transform the environmental approvals process for the Northern Territory. In other jurisdictions in Australia the consultation and development of a complete overhaul of the environmental process would be staged over multiple years. However, the Territory is looking to have developed and delivered an entirely new system in little over a year.

Furthermore, this reform is not alone. There are four pieces of Water legislation under consideration, new environmental factors and objectives for the NT EPA, a change of the NT EPA Board, a review of SafeWork NT, a climate change policy and a social policy all in development.

There are multiple demands on Industry's time for comment on Government initiatives. As a result there is widespread concern that insufficient consideration has been given to this reform.

2.2 Scope of Amendments

A further source of frustration for Industry is that some consider many of the changes proposed can occur without legislative reform. With the following powers already exist in the current legislative framework:

- A tiered assessment system already exists, but it is not being applied;
- The existing Terms of Reference provisions allow Government to set the desired outcomes; and
- Conditioning provisions under the existing legislation would ensure compliance.

It is a question of implementation rather than legislation.

2.3 Consideration of Sovereign Risk

What makes a mineral deposit economic to mine is more than just what the rocks in the ground are. It is a combination of the costs, regulatory factors, the commodity cycle and financing options available.

To attract investment, jobs and growth to the Territory the Government has the greatest control over what its regulatory expectations are, of which the environmental legislation is one. The cumulative impact of the environmental regulatory reform on the sovereign risk profile of the Territory must be considered. To allay Industry concern, AMEC requests that the Regulatory Impact Statement be tabled in Parliament.

3. Specific concerns in the Draft Bill

3.1 Significance

How the level of environmental assessment is determined is not answered in this draft legislation. The lack of attention to these critical thresholds is an omission that must be remedied.

During the consultation on the NT EPA Values and Objectives on 19 October, it was indicated that a significance test would not be defined. Instead significance would be determined according to a body of work that would be built upon.

This is out of step with all other Australian jurisdictions approach to environmental legislation. This has not been clearly explained in any of the consultation material provided.

If this is the approach it must be made clear prior to the passage of the legislation.

AMEC strongly recommends that a significance test be clearly outlined in the legislation and that a body of precedents is not expected to fill this gap.

The Northern Territory currently has eight operating mines. It has seventeen that are mooted. Whether they progress depends on an alchemy of financing, geology, commodity cycles and other factors may proceed. Seventeen mines are an insufficient number to build a body of precedents to provide any degree of certainty for future investors to invest.

Without a clearly defined significance test the subjectivity of the objects, principles, values, and objectives will destroy the certainty and transparency of how the NT EPA decision making.

3.2 Definition of Environment (Part 1, Division 2, Section 6)

Underpinning the Bill, and its implementation, is the definition of the 'environment'.

Industry considers that the definition of environment should only focus on the natural environment. The current definition is inclusive of physical, biological, economic, social and cultural aspects.

This definition does not articulate a clear boundary of what is considered. It does not provide certainty, as almost any matter can be considered under the current wording.

Each part of the definition is a complex, specialised area, most of which is already regulated separately by other government agencies. In our view, it is not necessary for the Northern Territory Environmental Protection Authority (NT EPA) to duplicate the regulation of other experienced and qualified agencies and community bodies. For example, we consider that the cultural aspects of the Northern Territory are already reflected by the Land Councils

The clear implication is that the other Departments are ineffective in their roles and that the NT EPA is needed to add a further layer of regulation.

AMEC consider this is not a fair reflection of these agencies, is not necessary, creates unneeded duplication and leads to increased costs and time delays.

If the NT Government wants the NT EPA to make broader decisions, the agency should be reshaped with its role shifted to reflect a true triple bottom line approach through a single decision maker with a whole of Government approval. If this was the case then the focus of the Agency, and its legislative framework, should be rebalanced so that there is even representation for the environmental, the social and the economic.

3.3 Open Standing (Section 254 & 255 of the Act);

Whilst industry acknowledges the intent of a proposal for statutory referrals as outlined in Sections 254 and 255, it is vitally important that such involvement is limited to those with a direct material interest in a project. All efforts must be taken to prevent frivolous and vexatious third party appeals in the proposed reforms to ensure that unnecessary and unwarranted costly delays do not occur.

The inclusion of open standing in the draft Bill incorrectly suggests the Government is unable to effectively manage environmental approvals.

It is for these reasons that AMEC is supportive of the intent of the Government's media statement on 30 October. The statement committed to:

"Prior to the legislation being introduced in Parliament this will be changed to judicial review being allowed in the environmental assessment process. This will be permitted for those directly affected, and those who made a valid and genuine submission to the decision-making process."

AMEC considers a merits-based review is only necessary if the Government, and Minister, are negligent in their duty and there has been a failure in the existing decision-making structure. Furthermore, third parties are unlikely to provide sufficient information to clearly identify and quantify an environmentally significant impact that has not been considered by the relevant Government Department or the NT EPA in the standard approval process.

The media statement does not expressly rule this out, and the definition of a "valid and genuine submission" remains broad enough to allow third parties to abuse the process.

The reality is that a statutory third-party appeal will create a further avenue for anti-development groups to slow and hinder proposals that will create jobs and revenue for the Northern Territory.

The Government must narrow the definition for a judicial review[1] and for an 'eligible person'[2] for a merits-based review. Both definitions need a clear distinction between those with a direct interest in a project and those that are not directly affected.

Under Section 254, for a judicial review the text should be amended to read:

A person may seek judicial review of a decision of the Minister, the CEO, the NT EPA or an environmental officer under this Act if that person is a party that is directly affected by that decision.

Under Section 255, the definition of eligible person should be amended to read:

*In this section **eligible person** means any of the following:*

(a) A person who is directly affected by the decision;

(b) An Aboriginal Land Council;

(c) A Registered Native Title Prescribed Body Corporate or a registered claimant under the Native Title Act 1993 (Cth).

Industry considers that the broad range of third parties which could make a referral to the NT EPA[3] is excessive and likely to stop development opportunities in the Territory. Industry is concerned that any of these listed third parties could make a referral to the NT EPA at any time, for any reason. AMEC is aware of cases in other jurisdictions where a referral has occurred before the proponent has even had time to commence preliminary research or undertake baseline studies.

The media statement indicating that the scope for review will be narrowed for merits-based review is positive. However, Industry concern remains until new draft wording is released.

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[1] Part 14 Review of Decisions, Section 254 on page 102, *Environment Protection Bill*

[2] Part 14 Review of Decisions, Section 255 (4) on page 102, *Environment Protection Bill*

[3] Ibid – page 18

3.4 Open Standings for Injunctions (Section 214)

In the current wording of the Draft Bill, any party can seek an injunction via a Court in relation to an alleged act or omission that contravenes the Bill. This provision allows for prohibitory, mandatory and interim injunctions.

The proposed injunctions will be used to stall the approvals process by opponents to development. AMEC recommends that the standing for the use of injunctions is limited to the parties directly impacted by the proposed activity.

It is inconsistent that the NT Government appreciates that open standing for merits-based review will lead to problems and delays and that open standing for injunctions will not. Injunctions will be used to delay development by those opposed to Industry.

AMEC recommend that the injunction provisions mirror the proposed standing for the merits-based review.

3.5 Principles of Ecologically Sustainable Development

Division 1 of Part 2 covers a very broad range of principles of ecologically sustainable development.

Clause 2 of Section 14 establishes that the following principles 'must' be considered. However, Clause 3 of Section 14, reduces the clarity of decision making by the NT EPA, as it can be read to suggest that not all principles have to be considered. This would appear to reverse the "must consider" outlined in Clause 2.

AMEC suggests that the NT EPA should consider each principle or be willingly to publicly state why they decided not to consider a certain principle.

The wording of Clause 2 and 3 needs to be rewritten so that they do not conflict.

3.5.1 Decision making principle

The decision-making principle as written in Part 2, Division 1, Subsection 15 is similar to the intergenerational equity principle outlined in Subsection 17. This appears to be a duplication.

Industry recommends that the decision-making principle includes reference to evidence based, science based, risk-based decision making. The assumption has been made that these three critical foundations of decision making will happen automatically, it is important that a decision maker be bound by these factors.

3.5.2 Precautionary principle

Industry considers that this principle is weighted against any activity that the Government is uncertain of the outcome. It raises questions over what is determined to be sufficient certainty.

3.5.3 Intergenerational equity

The extension of our current preferences and obligations into the future is to be questioned, as there is uncertainty regarding the perspective and situation of future generations of Northern Territorians.

The preservation of options, which the statement in Subsection 17, may also be interpreted, as should not result in the maintenance of the status quo.

The current drafting of Subsection 17 includes a reference to the "health" of the environment. This is the only instance of this reference in the current drafting of the Bill. The introduction of new terms creates complexity for the application of this principle.

3.5.4 Principle of improved valuation, pricing and incentive mechanisms

In Subsection 20, Clause 1, it is unclear from the wording what environmental factors should be included in the valuation of which assets and services, and whom is including this valuation. Clause 2, refers to "Persons", whereas it would be assumed that the term proponent may be more appropriate.

Clause 3, lacks clarity, with a broad reference to "Users of goods and services". Furthermore, reference to the full life cycle costs is difficult to implement, as price for goods and services is currently set independently in the free market. It is unclear what the purpose of this statement is in reference to environmental protection and management.

Clause 4 introduces 'established environmental goals', which are not defined, and suggests market based and incentive-based solutions exist as possible solutions. The current wording is vague and it is unclear how necessary its inclusion in the legislation, or what the Government intends.

3.5.5 Principle of economic competitiveness

The three clauses that underpin this principle are broad, difficult to measure motherhood statements. The first clause does not reference economics or competitiveness; the second is a statement regarding the purpose of economy, which is to protect the environment; and the third clauses requires that being economically competitive is "recognised". These clauses should be amended to reference costs, jobs and comparative advantage.

3.6 Management Hierarchies (Part 1, Division 2)

The objects of the Act as defined in Part 1, the principles in Part 2, Division 1, as well as the proposed values, and objectives, and the proposed guidelines that are yet to be prepared will each influence how environmental approval decisions are made by the NT EPA.

In the current draft Bill it remains unclear what the relative precedence of these elements are compared with each other if and when they conflict.

It is important that the hierarchy is defined from the outset. The focus of Division 2 is on management hierarchies, the addition of a section on "Environmental Approval Decision Making"

is needed to remove ambiguity. This will increase certainty and transparency for regulators and proponents.

3.7 Declaration of Protected Environmental Areas and Prohibited Actions (Part 5, Division 2).

The Draft Bill introduces a new concept 'Protected Environmental Areas'. It is unclear how this concept interacts with the existing Sites of Conservation Significance. The Government has already recognised 67 sites identified as the most important sites for biodiversity conservation that need further protecting. Each site has been assessed as being of national or international importance for biodiversity conservation. It is unclear why the Draft Bill does not refer to Sites of Conservation Significance, and why a new term introduced. If the Protected Environment Area (PEA) is the same as a Site of Conservation Significance, the PEA should be renamed. If it is different, that must be clarified as this appears to be duplicative. It is now unclear what the status of Sites of Conservation Significance is following this legislative reform. The Government must explain how Sites of Conservation Significance will be treated in approvals and condition setting.

Industry is also concerned that through the gazettal of Prohibited Actions, the Government will implement a range of moratoria. AMEC is opposed to moratoriums of any form.

Moratoriums further erode community confidence in the regulatory system. It would incorrectly suggest the Government is unable to regulate land access. Furthermore, it would be a major disincentive to companies seeking to undertake mineral exploration and possible mining activities in the Northern Territory.

3.8 Criminal liability of Executive Officers (Section 245);

AMEC is opposed to the inclusion of this Section on the grounds that it is detrimental for investment. However, the following comments are made to improve the proposed draft:

3.8.1 Definition of executive officer

The definition provided for "executive officer" is too broad as it includes the term "other persons" who may be concerned with or takes part in the management of the body corporate. This can have the effect of capturing any person interested in or 'concerned' with the company which is not how the provision should be intended to operate.

We suggest taking the approach of the Environmental Protection Act 1994 (QLD) ("EPA QLD") which sets out a scheme under Part 5, Division 1, to ensure that related persons to a company are held accountable for breaches of their environmental protection legislation. Under section 363AB of EPA QLD, there is a detailed definition of "related person" which applies strict standards and guidelines on who this is intended to capture.

AMEC believes this approach is far more suitable and effective as it makes clear who the legislation is to apply to under what circumstances.

3.8.2 Criminal penalty

We have a significant issue with the facts that no penalty was given for this section in the draft Bill. Under the similar scheme in the EPA QLD, a criminal penalty is only there as a very last resort, after an Environmental Protection Order has been issued due to a contravention of EPA QLD. Only in the case that this order is wilfully contravened will it attract a criminal penalty, otherwise a civil penalty is in place. This is a far more measured response that the current requirement for the criminal penalty to apply of being reckless under the draft NT Environmental Protection Bill 2019.
We believe implementing a similar provision in the draft bill to that of the EPA QLD will better achieve the sought outcomes of recovering funds via civil penalty to ensure any environmental damage is remedied, and penalising individuals with a criminal penalty when they have knowingly and wilfully contravened an environmental offence.
Further, implementing a more reasonable offence provision as this will be less likely to have a negative deterrent effect on investment in the State, as it requires an act of a guilty mind, rather than what could possibly be an error in judgement under the reckless standard.

3.8.3 Inconsistent terminology

Paragraphs 245(1) (a), (b) and (c) should use the full term "executive officer" not just "officer" for clarity.
Further, the language between the subsections 245(1) should be more aligned with subsection 245(3) to provide more information about what the court should consider in determining recklessness. At the moment the provision only provides further guidance on deciding if the executive officer took or failed to take reasonable steps to prevent the contravention, and nothing about if the failure to take such steps would be considered reckless under the provision.

3.8.4 Missing definition

There is also no definition for "relevant offence" under section 245. While there are definitions for "relevant offence" under other sections, such as section 243, it states that the definition only applies to that section, meaning that section 245 is left without a definition of relevant offence. This clearly needs to be rectified.
We also note that a definition for "declared provision" is included in section 245, without the term actually being used.

3.9 New Environmental Protection Levy (Part 9, Division 2);

Part 9, Division 2 outlines a new Environmental Protection Levy. Despite stating that the Regulations would specify the Levy amount (Section 129, Clause 1), the current draft regulations omit a reference to the Levy.

The Section also makes no reference to Division 4 of Part 4 of the Mine Management Act, which also specifies a levy for environmental purposes.

The introduction of this levy was a key component of the amendments to the Mining Management Act in 2013. This non-refundable annual levy is 1% of the total calculated rehabilitation cost applied to each mining operation authorised under the MMA.

The purpose of the levy is clear under Part 2 of Section 44A of the MMA:

> (2) A ***levy*** is a tax in relation to mining activities that is levied for the purpose of providing revenue:
> (a) for the Fund; and
> (b) for the effective administration of this Act in relation to minimising or rectifying environmental harm caused by mining activities.

The levy has raised a substantial pool of money from mining companies to 'minimise or rectify environmental harm caused by mining activities'. In the recently published Department of Primary Industry Resources Annual Report the Mining Remediation Fund currently totals $23,444,000[4] – a $8million increase on the previous year.

The Government needs to clarify how this levy will interact with the levy in the Mining Management Act. Specifically, whether Section 128, Clause 2, will exempt those who already pay in to the Mining Remediation Fund.

There is a lack of clarity as to the purpose of this section, and to what end these funds will be used.

3.10 New Environmental Protection Funds (Part 9, Division 3);

The Section grants the Minister the right to set up an Environmental Protection Fund. An Environmental Protection Fund will be funded by a portion of the levy, any costs recovered, amounts or a proportion of the amount paid as financial assurance.

While the Minister must approve all expenditure, and all money raised by a levy from a specified industry that are in a Fund must be used on the industry that paid, unless the money is directed toward an industry that is affected by the money.

The amounts paid out of the Fund can be recovered from the 'person' that was responsible for the environmental emergency, environmental harm that required remediation or rehabilitation or the action from which the environment was protected.

It is unclear what criteria would have to be met for this expenditure that incurred the debt to be justified, how the recovery of this debt would work and whether the debtor would have an avenue of recourse.

It is a further concern that the current regulations do not provide any guidance as to how these funds should be managed. The regulations should underpin the governance of these proposed Funds. At the very least the regulations should mention the Fund, and introduce basic probity, audit and transparency requirements.

3.11 Environmental Bonds (Section 121-126)

Section 121 -126 introduce an environmental bond. The newly introduced an environmental bonding system does not explicitly displace the existing bonding system under the Mine Management Act. Unless the Bill is reworded it would appear that there will be two bonds required for the same purpose. This duplication must be corrected.

[4] Page 214, Department of Primary Industry and Resources Annual Report 2017-2018

3.11.1 Recalculation of the bond amounts (Section 123, Clause 5)

A bond is one of the biggest expenses a company faces when developing a mine. Introducing staggered recalculations of the amount bond held could allow for progressive rehabilitation. Industry is supportive of progressive rehabilitation as a means of incentivising environmental outcomes prior to the closure of the mine.

If Clause 5 is used to increase the bond, despite no changes in the activities on the mine from what had been approved, then AMEC considers it will be damaging to investment. The complete lack of commentary provided with this Bill allows for a wide interpretation.

3.11.1 Fixed length of bond terms (Section 123, Clause 6)

The term of an environmental bond should match the term of an approval or tenure.

Extending a bond beyond when the bond holder holds the tenure and/or approval for activity allows for the possibility that a company will be unfairly liable for the actions of others. Once an environmentally approved action has occurred the assumption is that the agreed rehabilitation would occur. Once the Government stated their satisfaction with the rehabilitation, the sequence of mine closure and rehabilitation would occur and the bond would be returned.

Clause 6 delays mine closure and could lead to the delay of relinquishment. It may delay rehabilitation. It also opens the possibility that the Government will hold bonds indefinitely.

3.12 Enforcement (Part 11)

The intent of the enforcement section is to prevent against environmental harm. The current drafting of Part 11 is open to a broad interpretation and places little limit on the powers of the environmental officer.

The Western Australian Environmental Protection Act 1986 includes reference to "reasonable grounds" as a threshold that must be weighed before entering a premise and seizing evidence.
AMEC recommends that the draft includes provisions to limit the enforcement of powers to those that are reasonable. For example from the Western Australian Environmental Protection Act 1986 (italicisation included for emphasis):

> 92A. Seizing evidence etc.
> (1) An inspector may seize any thing that the inspector suspects on *reasonable grounds* —
> (a) is, or is intended to be, involved in the commission of an offence against this Act; or
> (b) may afford evidence of the commission of such an offence.

Furthermore, the current drafting does not make a distinction between what is evidence against an action and what is other documentation. There should be a distinction and allowance for the request of documentation via writing.

AMEC recommends that a provision be included to apply to the CEO for compensation for the damage or loss due to an enforcement action.

3.13 Registration of Environmental Practitioners (Part 8 of the Regulations)

Anyone preparing environmental impact assessment (EIA) documents, providing an independent review of documents, providing advice on the EIA process, undertaking an investigation or preparing or reviewing any of the required documents, must be registered.

The rationale for registration is not stated in any of the supporting material. It is assumed that registration is required to improve the quality of the documents submitted. If that is not the outcome, then the reason for introducing an extra layer of red tape should be questioned.

However, if the 'quality' of the documents being submitted is improved then there should be a reduction in timeframes for approvals. This is not an unreasonable request as the Government will charge practitioners for the privilege of registering, a charge that will be passed onto the companies using their services.

4. General concerns with the Draft Bill

The following other concerns are raised throughout the document.

4.1 Ministerial dispute resolution

On page four of the Frequently Asked Questions document that was published alongside the Bill, the bottom paragraph suggests that if an environmental approval is not granted than the entire mining approval cannot proceed. It is unclear whether this is applied more broadly, but it would be logical that provisions would apply to all other development approvals.

This is not made explicit in the draft legislation. It should be.

This approach will mean the environmental approval acts as a veto over all development.

AMEC recommends provision is made for how a dispute between an environmental approval with a development approval will be resolved.

In the Western Australian *Environmental Protection Act 1986* legislation, the Governor provides an outlet if there is a conflict between two Minister's approvals. Section 48J reads as follows:

> ***48J. Disputes between Minister and responsible Ministers, Governor to decide***
> If the Minister and a responsible Minister cannot agree —
> (a) on whether or not the Minister should give advice under section 48A(2)(b) in relation to a scheme; or
> (b) under the relevant scheme Act on whether or not an environmental review has been undertaken in accordance with the relevant instructions issued under section 48C(1)(a); or
> (c) on whether or not a direction should be given to the Authority under section 48D(2) or 48E(1) or, if a direction should be so given, what its content should be; or
> (d) on whether or not the scheme to which a report relates

should be subject to conditions under section 48F or, if that scheme should be so subject, to what conditions it should be so subject; or

(e) on whether or not conditions referred to in section 48G(2) should be altered and, if so, to what extent, the Minister and the responsible Minister shall refer the matter in dispute to the Governor and the decision of the Governor on that matter shall be final and without appeal.

The Western Australian Governor relies on the Cabinet to provide them with advice, so this provision effectively shifts the dispute resolution to Cabinet. If there were to be a dispute between two Ministers approvals, the issue will become political and it is appropriate that the peak political body, the Cabinet, resolve it.

AMEC strongly recommends that the Northern Territory Government has a provision in this Bill that allows a clear pathway for a dispute between approvals to be resolved. To not do so, will create problems for future Governments in the implementation of this Act.

4.2 Timeframes

Throughout the Draft Bill there is inconsistent use of 'business days' as opposed to 'days'. The referral process to other Departments lack timeframes, this must be amended to ensure prompt responses for companies invested in the process. Timeframes are important for the certainty and the transparency of the process.

The measure of timeframes be standardized to business days and the referral process to other Departments needs a fixed timeframe. If the timeframe is breached by a Department, AMEC would suggest it is assumed that the Department does not have a comment.

4.3 Inconsistent terminology

It is unclear why there is interchangeability of the term's 'person', 'company' and 'proponent' throughout the draft Bill. It would make it easier to read if all the terminology was consistent.

4.4 Penalties

The current drafting of the Bill omits each reference to the quantum of penalties. This lack of transparency makes it difficult to respond.

4.5 Consideration of Commonwealth environmental bilateral arrangements

It is assumed that the interaction of this drafting with the Commonwealth legislation *Environmental Protection and Biodiversity Act 1999* has been thoroughly considered in the drafting process. It would detrimental if this Bill was to disrupt the bilateral arrangements with the Commonwealth.

4.6 How is the Waste Management Act going to be incorporated?

It is understood that the remaining sections of the Waste Management Act will be incorporated with the current Draft Bill, once this Draft Bill is an Act via an Amendment Bill. This process has created confusion, and uncertainty for Industry. There is also a higher risk of unintended consequences when combining the two pieces of legislation.