

Draft Environment Protection Regulations 2019 – An overview

Caution: Archived content

This content was created to serve a specific purpose at a particular period/time.

It may contain references to policy positions, approaches, documents or other information that has been superseded.

Introduction

The Northern Territory Government is reviewing and reforming the current environmental regulatory system. Reforms are critical to achieving a robust regulatory system that the community will trust while encouraging industry investment and economic growth.

The new Environment Protection Act 2019 provides for an improved environmental regulatory management system. It establishes the basis for an improved environmental impact assessment system and a new environmental approval.

The draft Environment Protection Regulations 2019 have been prepared to support the Act.

Further information on the operation of the proposed environmental impact assessment system can be found in the fact sheet 'Environmental impact assessment system'.

Overview of the draft regulations

The draft Regulations contain four core elements:

1. processes for the Minister for Environment and Natural Resources (the Minister) to follow when making declarations of environmental objectives or a referral trigger
2. processes for the Minister to follow when making declarations of protected environmental areas or prohibited actions
3. processes for the Northern Territory Environment Protection Authority (NT EPA) to follow in conducting the environmental impact assessment process
4. prescribing a number of matters required by the Act; e.g. specifying matters to be contained in public registers and processes to be followed when calling on an environment bond.

Part 1 Preliminary matters

This Part provides for general matters associated with establishing the Regulations.

It sets out the title of the Regulations, provides for commencement of the Regulations and identifies the definitions used throughout the draft Regulations.

Words that are defined in the Act are used the same way in the Regulations. These words are therefore not defined again in the draft Regulations.

Part 2 Important concepts

This Part identifies some important matters related to the Act and draft Regulations. It:

- provides a monetary threshold that can be used to determine if significant environmental harm has occurred
- specifies the different types of environmental impact assessment methods that the NT EPA can use when conducting environmental impact assessments
- specifies a number of criteria for the Minister to consider when determining if a person, including a company and its directors, is a “fit and proper person” to hold an environmental approval.

Part 3 Environment protection declarations

This Part links to Part 3 of the Act.

It establishes the processes the Minister must follow when making, reviewing, amending or revoking declarations of:

- environmental objectives
- referral triggers
- protected environmental areas
- prohibited actions.

All declaration processes include requirements for public consultation.

Part 4 Referrals of proposed actions and strategic proposals

This Part establishes the processes the NT EPA must follow when considering referrals of projects that may have a significant impact on the environment.

The Part requires the NT EPA to consider and accept (or refuse) the referral. If the referral is accepted, the NT EPA must publish the referral for public comment.

At the completion of the referral process, the NT EPA will identify if impact assessment is required, and if so, the method of assessment.

In addition to public consultation processes, the Part establishes requirements for consultation with Government agencies, and the development and publication of statements of reasons for decisions.

Under this Part, the NT EPA may recommend the Minister issue an “early refusal” for a project. The NT EPA may only make this recommendation where it considers that the action is unacceptable because it is likely to have significant impacts that cannot be appropriately avoided, mitigated or managed.

Part 5 Environmental impact assessment

This Part provides for a number of generic matters related to environmental impact assessments including:

- powers to direct proponents to provide information necessary for the impact assessment process
- powers to obtain advice or other information necessary for the impact assessment process from third parties
- obligations for the NT EPA to have regard to the Minister's environmental objectives when conducting assessments
- suspension and termination processes.

The Part also provides the specific processes associated with conducting each of the methods of impact assessment, and the preparation of the Assessment Report. These methods are:

- assessment on referral information. This assessment method considers the referral information and any additional information obtained as part of the referral process and the submissions on the referral information.
- assessment by supplementary environmental report. This assessment method considers the referral information, any additional information obtained as part of the referral process, a supplementary environmental report prepared by the proponent to respond to submissions and provide additional information required for the assessment, and public submissions on the referral information and, if requested, the supplementary environmental report.
- assessment by environmental impact statement (EIS). This assessment method substantially mirrors the Territory's existing EIS process, however incorporates additional opportunities for public review and consultation on documents. These assessments consider the referral information, any additional information obtained as part of the referral process, a draft EIS prepared by the proponent, a supplement prepared by the proponent to respond to submissions on the draft EIS and provide additional information that is required for the assessment, and public submissions on the referral information, draft EIS and, if requested, the supplement.
- assessment by inquiry. This assessment method enables the NT EPA to conduct an inquiry, or to appoint a panel to conduct an inquiry. The NT EPA or inquiry panel is able to develop its own procedures for the inquiry.

The draft Regulations also make provision for a 'proponent initiated EIS'. This process allows a proponent to prepare draft Terms of Reference for an EIS and submit these at the same time it submits its referral documents. It provides for a more streamlined process of EIS assessment.

Part 7 Significant variations

This Part identifies processes for the referral and assessment of ‘significant variations’ received during or following an impact assessment process.

A significant variation of an action is a variation that:

- will alter the action to the extent that a referral trigger that did not previously apply to the action now applies, or
- has the potential to have a significant impact on the environment, or
- will result in new or additional areas being subject to a potential significant impact on the environment.

A significant variation is not a variation that occurs during the normal course of an impact assessment process in response to improved knowledge or understanding or to address community feedback.

Part 8 Environment protection bonds

This Part identifies the processes that are to be followed when making a claim on an environment protection bond that may have been required as a condition of an environmental approval. It supports Part 7 of the Act.

Part 9 Registers of environmental auditors and environmental practitioners

This Part establishes requirements for the Chief Executive Officer to establish registers. It also recognises environmental auditors registered under the Waste Management and Pollution Control Act 1998 as auditors for the purposes of the Act. It supports Part 8 of the Act.

Part 10 Notice of environmental incidents

This Part specifies the information that must be submitted as part of reporting an environmental incident in accordance with Part 9, Division 8 of the Act.

Part 11 Infringement notice offences

This Part establishes an infringement notice scheme for the purposes of the Act.

Part 12 General matters

This Part contains a range of general provisions required to support the effective operation of the Act and Regulations.

It identifies that certain costs incurred by the NT EPA during the impact assessment process – such as costs of advertising the availability of assessment documents for public review – can be charged to the proponent.

It also establishes that submissions to the NT EPA during the assessment process may be made in writing or orally in order to provide flexibility and encourage community involvement in the assessment process.

The Part also identifies the material that the CEO must publish as part of a public register.