



5th December 2018
Environmental Regulatory Reform Team

Emailed to: environment.policy@nt.gov.au

Dear Environmental Regulatory Reform Team,

Re: draft Environment Protection Bill and draft environment protection Regulations

ECNT supports the NT Government's commitment to introducing modern and effective environmental laws for the Northern Territory, and we welcome the opportunity to comment on the draft Environment Protection Bill and draft environment protection Regulations

The Environment Centre NT (ECNT) is the peak community sector environment organisation in the Northern Territory, raising awareness amongst the community, government, business, and industry about environmental issues and assisting people to reduce their environmental impact and supporting community members to participate in decision-making processes.

The draft laws represent an important step forward for environmental protection in the Territory. ECNT welcomes major environmental regulatory reform steps that our organisation has called for over many years. We are assessing the draft Bill and regulations through the following lens. Does the proposed environmental impact assessment process allow government and the community to examine a proposed project in detail, particularly assessing the benefits for society; the likely social, cultural and environmental impacts resulting from both the construction and operation of a project; and whether the safeguards and management measures to reduce the effect of these impacts will work, are considered reasonable and can be monitored and enforced. Is the process transparent, does it enable community participation, can it be applied to both major projects and development of new industries and does it also enable the community to be informed of less impactful projects? Does the process reduce the risk of undue pressure and influence from Industry, will it enable the community to build re-build trust in the proposed regulatory framework?

In our assessment, the implementation of a standalone environmental approval issued by the Environment Minister, with conditions attached to the approval and enforced by the Department of Environment and Natural Resource, is the core of this Bill to be celebrated and fully supported.



Our submission sets out further aspects of the Bill and Regulations that we support. We also list the areas that we have concerns about that we believe undermine the principles of accountability, transparency and creating community confidence.

ECNT supports the following aspects of the proposed legislation:

- For the first time, a new environmental approval granted by the Environment Minister, with an independent environmental assessment process by the Environment Protection Authority.
- The environmental approval to include conditions that target the management of potentially significant impacts on the environment.
- Compliance and enforcement responsibilities of the approval and conditions to sit with the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources.
- The Environment Minister is required to consider whether the proponent is a 'fit and proper person'.
- The inclusion of both referral and approval triggers
- Support that the new approval is in addition to existing project approval requirements or authorisations.
- The provision for the NTEPA to provide the Minister with a statement of unacceptable impact
- Requirement to consider the principles of ecologically sustainable development
- Explicit application of Environmental decision-making and Waste management hierarchy's
- Minister powers to approve environmental policies, declare protected environmental areas and prohibited actions.
- Provision of a range of important new tools for environmental regulators including the establishment of the environment protection bonds and levy and environment protection funds.
- Strong compliance and enforcement provisions including civil remedies in Parts 10,11, 12 and 13
- Offsets register
- Strongly support Civil proceedings in Part 12 and the eligible applicant list
- We strongly support Part 14, as currently written in the draft Bill. This includes open standing in clause 254 and the jurisdiction of the Civil and Administrative Tribunal to review a decision made and the list of eligible person as written in clause 255 (4)

We were incredibly surprised and disappointed to read a media release from the then Acting Minister for Environment and Natural Resources, Lauren Moss on the 30th October. To quote the first paragraph; "The Territory Labor Government is restoring trust by better protecting our environment and will amend provisions in the proposed new environmental impact assessment and approval system, in response to concerns raised by industry".



We imagine those who have been work incredibly hard for months and years on this legislation, guided by the principles of 'independence, transparency and accountability', where as flabbergasted as we were to read this announcement. The very act of making this decision, without broad input from the community, during the consultation period, directly demonstrates why third-party appeal rights for both merits and judicial review and are so vital to balance undue industry influence. We urge the NT Government to revoke this decision and consider other options that can address all stakeholder concerns and mend the damage done to community confidence in this process and create a regulatory framework the community can trust.

We also wish to highlight concerns with the aspects of the draft Bill and Regulations as follows:

- It appears that a vital ESD principle that 'decisions and actions should provide for broad community involvement on issues which affect them' is missing from the draft Bill. It is not only the stated principle that is missing, but also the mechanisms to empower this principle. It is a significant oversight that the rights and role of Aboriginal people and traditional ecological knowledge is not made explicit in this draft Bill. This includes the commitment to the principle of Free, Prior and Informed consent and commitment to principles under the UN Declaration of the Rights of Indigenous Peoples.
- Given the existential threat to humanity from climate change, we are disappointed that there is no explicit mention of this in the objects or ESD principles.
- ESD principles not only need to be considered, but the Act must stipulate that decision makers need to also demonstrate how they have 'applied' these principles to arrive at their assessment.
- We have concern regarding the definition of 'significant impact' and how referral and approval triggers, including the Territory Objectives will be set and enacted. We await more engagement on this issue.
- One of the major issues with the current environmental approval process is the lack of community scrutiny of 'notices of intent'. We are disappointed that this issue has not been addressed as it appears that there is still no public notice or scrutiny of 'referrals' that are 'deemed' not to have a significant impact. Thus, the public is again excluded from consultation and input into the decision regarding 'significance' and has no access to the project details or the information provided if the referral isn't accepted. This does not support the principles of public participation and transparency. We strongly recommend that when a referral is submitted to the NT EPA it also goes onto a public website for comments. (This comment is made in reference to the diagram and flow of decision making on Fact Sheet 8).
- Despite the indication that that there will be separate legislation relating to 'chain of responsibility requirements', these provisions needed to be included in this



legislation, so that it captures all industries and not just requirements that will be applied to Hydraulic Fracturing projects in separate legislation.

- We highly object to the broad power to exempt people from complying with the Act. Clause 267 (f) needs to be removed in the interests of trust, accountability and anti-corruption.
- We are concerned by the short time frames allowed for public and no explicit consideration for public participation for Aboriginal people and remote communities.
- Where the Environment Minister intends to grant an approval where the NTEPA has provided advice of an 'unacceptable impact', there must be public consultation, preferably via a public hearing to ensure transparency, accountability and consider the public interest.
- We are concerned that the proposed EIA process will enable projects to be 'fast tracked' with assessment made on the 'referral information only' without additional scrutiny from the public. There needs to be further public scrutiny if no additional information is required via a supplementary assessment report or EIS, before an assessment and draft approval is prepared.
- There needs to be clarity regarding transitional arrangements and proposed triggers.

Finally, it is essential that adequate resources are allocated in the 2019-2020 budget for each agency responsible for implementation of the new laws, including environmental assessment, public consultation, monitoring, compliance and enforcement. It is also imperative that DENR is properly resourced to ongoingly enforce conditions applicable to approvals and ensure compliance.

We look forward to further engagement and consultation on the next draft of the Bill and regulations and encourage broader consultation with the wider community.

Yours sincerely

Shar Molloy
Director