

# ENVIRONMENTAL REFORM IN THE TERRITORY



## Why do we need environmental reform?

Government, industry and the community all recognise that there is a need for reform and modernisation of the Northern Territory's environment protection framework – particularly the process of environmental impact assessment and approval.

There have been several reviews of the Territory's Environmental Assessment Act over the last 10 years. These reviews and other feedback from non-government organisations, industry and individuals have identified:

- A lack of transparency in the current environmental impact assessment system, particularly in respect of decision making.
- Uncertainty about the responsibilities of proponents, the NT EPA and government agencies, and lengthy and uncertain timeframes for completing assessments.
- Inconsistency and inequity in the application of rules and processes for similar projects, different approaches and conditions for managing similar environmental impacts across different industries.
- Gaps in the assessment system which have meant that some major projects have not undergone assessment and approval.

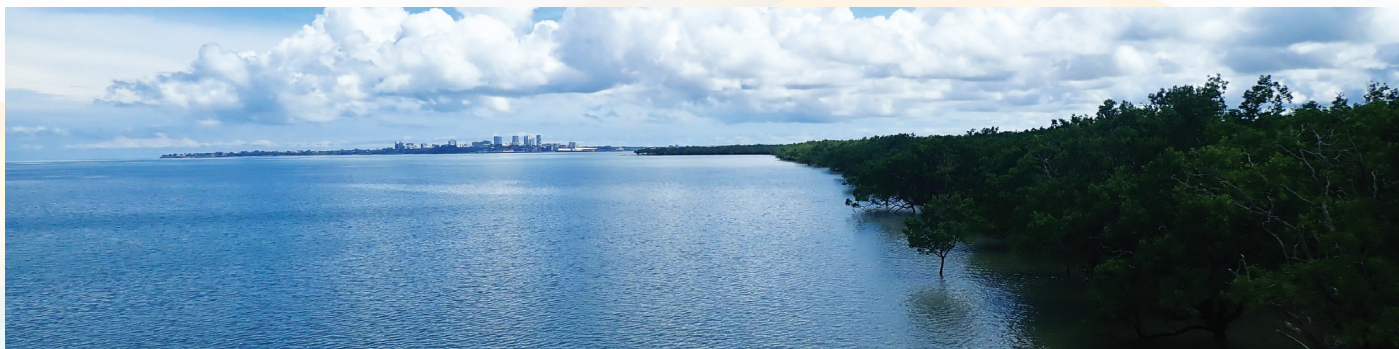
- Other cases where the legislation under which approval is given does not provide for enforceable conditions to protect the environment.
- Failure and inability to take appropriate action to ensure proponents comply with environmental obligations.
- A risk that agencies responsible for promoting a sector do not act with appropriate rigour to manage environmental impacts (sectoral capture).

These issues result in our current system being slow and costly for industry and government, complex for regulators and unclear in its outcomes for the community.

These are not matters that can be resolved with minor 'tweaking' of the existing legislation.

These inadequacies have contributed to a general lack of confidence in the Territory's capacity to manage the environment, and to attract and facilitate industry investment for ecologically sustainable development.





## What is environmental impact assessment?

Environmental impact assessment is the process of assessing the likely significant environmental impacts of a project.

It ensures that unnecessary or unacceptable harm to the environment is avoided and provides government, proponents and community stakeholders with the information needed to make decisions on environmental issues. Environmental impact assessment is undertaken by jurisdictions across Australia and throughout the developed world, under established legislation.

The current Environmental Assessment Act has been in effect in the Northern Territory since 1984. The current system essentially involves:

- an independent environmental impact assessment process undertaken by the Northern Territory Environment Protection Authority (NT EPA), which results in a report with recommendations
- subsequent project approvals by the minister responsible for the sector seeking approval, usually the mining or planning minister.



## What are the benefits?

The reforms will provide increased timeliness, certainty and consistency for proponents, industry and community because:

- Environmental impact assessment is focused only on potentially significant impacts, enabling tighter targeting of information requirements for proponents.
- Decision-making criteria are contained in the legislation rather than in policy.
- Environmental objectives that can be defined in regulation will define the environmental values to be considered in determining whether a project may have a significant impact.
- Terms of reference for an Environmental Impact Statement (EIS) will focus only on those areas where there is potential for significant impact, and cannot be arbitrarily changed during the assessment process.
- There will be three different levels of assessment tailored to the level of risk and complexity associated with individual projects. This will allow lower risk projects to be assessed much more quickly.
- Procedures for each level of assessment are clearly described in regulations, removing ambiguity and ensuring consistency in approach.
- Maximum timelines for assessment decisions and actions are clearly identified in regulations, including for the Minister's decision on an environmental approval.
- The Minister has the power to issue an 'early refusal' for a project that has an unacceptable level of risk.
- All documentation associated with an assessment and reasons for decisions will be published, increasing visibility for all interested parties.
- There are clear provisions for judicial review of decisions with standing for proponents, affected parties and those that made a valid submission during the process.



## Modernising the system

The proposed legislation introduces some new features that allow a more sophisticated approach to environmental assessment, including:

- A provision for environmental offsets as a condition on an environmental approval that allows for risks that cannot be mitigated to be offset, where appropriate.
- An option for strategic assessment, where a 'class' of projects or a development program may be considered at a regional scale. Strategic assessment reduces the need for a separate assessment process for each individual project, and better considers the potential cumulative impacts from multiple developments in an area.

## Decisions made in the Territory's best interest

A decision by the Minister for Environment to issue (or refuse) an environmental approval will be made based on the significant environmental risks and benefits of a project, including social, cultural and economic issues.

The Minister will consider a report from the independent NT EPA on the risks and benefits of the project, and can impose approval conditions to avoid or manage potentially significant impacts.

This will ensure that development decisions are made in the best interests of the Northern Territory and facilitate economic growth without unduly compromising environmental values.

Similar powers exist in several other jurisdictions, where they have not impeded sustainable development. Rather, they provide comfort to the community that there is a robust system to protect the environment from unwarranted harm.

The environmental approval confirms that a project can proceed on environmental grounds and a proponent need not wait until a sectoral authorisation (such as a mining approval) is issued to understand their environmental conditions.

This builds certainty earlier in development by delivering a 'bankable' environmental approval at the conclusion of the assessment process.

As a condition of the approval, the minister may require the payment of an environmental bond to ensure remediation and rehabilitation requirements are completed. This will not apply to any proponent who pays a bond or security for the same matters under other legislation.

## Progress

In May 2019 the Draft Environment Protection Bill was introduced into the Parliament and referred to the Social Policy Scrutiny Committee (the Committee).

Using a rigorous and transparent process, the Committee will determine whether Parliament should pass the Bill or make changes. It's expected to report to Parliament in September 2019.

After the Bill has passed, the department will work closely with key stakeholders on drafting the Regulations. We expect the new impact assessment system to be in place in the first half of 2020.

## More information

[www.denr.nt.gov.au/environmental-reform](http://www.denr.nt.gov.au/environmental-reform)

