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| Fact sheet 2: The Environment Protection Bill 2019 |

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Introducing the Environment Protection Bill 2019

The Northern Territory (the Territory) 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 Environment Protection Bill 2019 (the Bill) is the first stage of the environmental reform program. The Bill will introduce improvements to the environmental impact assessment process and establish an environmental approval for the Territory. It will replace the current Environmental Assessment Act 1982 which has been in effect since 1984.

Further detail on each of the clauses of the Bill is contained in the Explanatory Statement to the Bill, which is available from the Northern Territory Legislation website: https://legislation.nt.gov.au/

# Environment Protection Bill 2019

## 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 starts (which is the day, or those days, that are chosen by the Administrator of the Northern Territory (the Administrator)), the objectives 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 make decisions under the legislation. Decision makers include 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).

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 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 environmental objectives and a power to declare a referral trigger:

* the environmental objectives and a trigger are pathways used to inform when an action is to be referred to the NT EPA for consideration under the environmental impact assessment process
* the environmental objectives will be used to inform when an action is to be referred based upon its potential for significant impact
* a referral trigger (either activity-based or location-based) set out those activities or areas where an activity is proposed that require a referral to be made to the NT EPA.

The Regulations will outline the processes which must be followed by the Minister before making, revoking or amending the Territory environmental objectives or an environmental trigger. This will include requirements for public consultation.

Division 2 allows the Administrator to declare:

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

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

The Minister may declare temporary protected environmental areas for a period not exceeding 12 months. A temporary declaration can be made without public consultation where it is warranted and time is of the essence.

The Regulations will outline the processes that must be followed by the Administrator, including requirements for public consultation, before making, revoking or amending these declarations.

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.

## Part 4 – Environmental impact assessment process

This Part establishes the environmental impact assessment process for the Territory.

Division 1 outlines the purpose of the process and identifies the role and general duties of proponents in the assessment process. The purpose of the assessment process 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.

The Regulations will identify impact assessment processes.

## Part 5 – 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 identifies the purpose of Part 5 and the environmental approval.

Division 2 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 3 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.

Division 4 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 make the decision.

Division 5 requires that an environmental approval be published. This contributes to transparent and accountable decision making.

Division 6 contains matters related to the Minister imposing conditions on an environmental approval.

Division 7 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.

Division 8 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.

Divisions 9, 10 and 11 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 etc without compromising the integrity of the environmental approval.

## Part 6 – 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 7 – 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 8 – Environmental audits, environmental auditors and environmental practitioners

This Part allows the CEO to require environmental audits of approved actions. Audits can be used for a variety of purposes including:

* to identify environmental impacts and improvements
* to consider the accuracy of forecasts of the environmental impacts of actions and gauge the effectiveness of the safeguards or standards put into place to manage those impacts
* establishing registration schemes for environmental auditors and environmental practitioners.

## Part 9 – Enforcement

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

Division 1 provides for matters associated with the appointment of environmental officers including their powers and some requirements on how they are 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 notice 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 confirm that all necessary closure, 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. The Regulations will identify the information that must be included in a report of an environmental incident.

## Part 10 – 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 starting criminal proceedings. Civil proceedings must start within three years of the alleged offence occurring.

## Part 11 – 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.

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 start criminal proceedings, with the approval of the NT EPA or CEO as appropriate. It identifies that criminal proceedings must start within three years of the offence occurring or coming to the attention of the CEO or NT EPA.

## Part 12 – Review of decisions

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 a proponent of an action, an applicant for a decision, a person directly affected by a decision and a person who has made a genuine and valid submission during an environmental impact assessment and environmental approval process, may commence proceedings in the Supreme Court challenging the legal process that was followed in making a decision. That is, the Bill provides for limited standing for judicial reviews.

The Bill also allows a person affected by a decision made by the CEO or an environmental officer, usually a person issued with a statutory notice such as an environment protection notice or authorised officer direction, to request the Northern Territory Civil and Administrative Tribunal (NTCAT) undertake a review of the decision.

## Part 13 – 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.

It includes provisions to protect confidential information, while also including 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. This 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 14 – Repeals and transitional matters

This Part repeals the existing Environmental Assessment Act 1982 and Environmental Assessment Amendment Act 1984.

It also establishes transitional provisions to govern how projects that are currently undergoing environmental impact assessment or have completed the impact assessment process, will be moved into the new legislative regime.

## Part 15 – Consequential amendments

This Part identifies a number of amendments to other Northern Territory legislation that are required because of the repeal of the Environmental Assessment Act 1982.

## Schedule 1 – Reviewable decisions and affected persons

Schedule 1 identifies those decisions that can be reviewed by the NTCAT and who can request the review.