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| Fact sheet 4: Developing new environment protection legislation |

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A consultative process

# Introduction

In recognition of the need to reform and modernise the Northern Territory’s (the Territory) environmental management and protection framework, the Northern Territory Government (Territory Government) started a wide ranging environmental regulatory reform program in 2016.

Reforms to the Territory’s environmental impact assessment system have been informed by several reviews of the Territory’s Environmental Assessment Act 1982 that have been undertaken over the last decade. In May 2017, the Department of Environment and Natural Resources (the department) released a discussion paper, and throughout 2017 and 2018 the department undertook a series of one-on-one stakeholder meetings about potential improvements to the environmental impact assessment and approval system.

This work culminated in the release of a Consultation Draft Environment Protection Bill and Consultation Draft Environment Protection Regulations for stakeholder and public comment in October 2018. Thirty five organisations participated in interviews, 33 written submissions were received and 178 people submitted a pro-forma submission arranged by the Environment Centre of the Northern Territory. The results of this public consultation activity is available on the department’s environmental regulatory reform website. [[1]](#footnote-1)

# Environment Protection Bill 2019

As a result of public consultation, a number of changes were made to the Consultation Draft Environment Protection Bill. These changes are reflected in the Environment Protection Bill 2019 (the Bill).

## Significant changes

Most significantly, the Bill has been amended and streamlined to address only those matters directly required to introduce an enforceable environmental impact assessment and approval process. Ancillary environmental protection measures have been deferred and will be addressed in later reforms.

In summary these changes:

* Remove the capacity for the Minister of Environment and Natural Resources (the Minister) to declare approval triggers requiring certain activities to hold an environmental approval. This power was considered to be inconsistent with the risk-based approach of the legislation. The capacity to declare environmental objectives and referral triggers has been retained.
* Defer the establishment of a general environmental duty to minimise environmental impacts and to remediate and rehabilitate environmental harm to later reforms.
* Defer the establishment of environmental protection policies, which can be used to specify standards and thresholds for specific pollutants, to later reforms.
* Defer the establishment of requirements to make payments to cover residual environmental risks associated with the completion and closure of an action to later reforms. Residual risk payment frameworks are an emerging environmental protection measure designed to assist approval holders to fulfil their environmental obligations and ‘walk away’ from properly closed, remediated and rehabilitated sites. These payments were referred to as ‘financial assurance’ requirements in the consultation draft Bill.
* Provide additional certainty in how the power to declare protected environmental areas is exercised. The Minister retains the power to make temporary declarations. The Administrator of the Northern Territory (the Administrator) has been provided the powers to make permanent protected area declarations and prohibited action declarations.

## Other changes

Other changes that were made to the Bill in response to public consultation include:

* greater recognition of the rights and interests of Aboriginal peoples and communities
* additional recognition and clarification of the responsibilities of proponents in the environmental impact assessment process
* inclusion of additional decision making criteria to guide decision making
* improving certainty and timeliness in the approval system by ensuring that all decision making steps are subject to maximum timeframes
* inclusion of specific provisions relating to the protection of confidential information
* introduction of tiered offences and penalties responsive to the level of risk or harm to the environment and the culpability of the alleged offender.

There have also been a number of changes to the Bill reflecting different approaches to the drafting of legislation. These changes do not represent changes to the policy positions of the Territory Government.

# Environment Protection Regulations

The Bill will be supported by Environment Protection Regulations.

There will be a number of changes made to the draft Regulations as a result of the public consultation. These changes will reflect the changes to the Bill as well as specific feedback received during the consultation process.

Changes will include:

* improving certainty and timeliness in the assessment system by ensuring that all decision making steps are subject to maximum timeframes and introducing set timeframes for consultation activities
* clarification of proposed assessment processes, particularly those associated with strategic impact assessments and proponent initiated environmental impact statements
* clarification of assessment requirements where the proponent submits a significant variation to a proposal under assessment
* clarification of the Northern Territory Environment Protection Authority’s (NT EPA) powers and responsibilities in the impact assessment system
* identification of publicly consultative processes for the Minister and Administrator to follow when declaring environmental objectives or triggers, and protected environmental areas or prohibited actions.

More information can be found in the fact sheet ‘Environment Protection Regulations’.

# Future reforms

Further reforms to the Territory’s environmental protection and management framework are proposed.

In summary these reforms are designed to improve the:

* management of wastes and pollution
* system for managing clearing of native vegetation
* management of the environmental impacts of mining activities.

Consultation on these reform initiatives will be undertaken during 2019 and will result in amendments to the Environment Protection Act.

1. https://denr.nt.gov.au/environment-information/environmental-policy-reform/submissions-draft-environment-protection-bill-and-regulations [↑](#footnote-ref-1)