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| Fact sheet 16: Financial provisions – environment protection bonds, levies, funds and fees |

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Supporting the operations of the new environmental impact assessment system

# Introduction

The Environment Protection Bill 2019 (the Bill) forms the first stage of the environmental regulatory reform program. It has the purpose of introducing improvements to the environmental impact assessment and approval system for the Northern Territory (the Territory) and will replace the Environmental Assessment Act 1982 that has been in operation in the Territory since 1984.

Included in the Bill are powers to apply financial provisions in the form of environment protection bonds, environment protection levies, environment protection funds, and administrative fees associated with the Bill.

The inclusion of financial provisions reflects international best practice and common standards applied across Australia to ensure environmental protection.

## Environment protection bonds

Environment protection bonds are used to protect the government (and therefore the taxpayer) from financial costs associated with undertaking environmental management activities in circumstances where the legally responsible person is not able to (e.g. because they are bankrupt).

Environment protection bonds can facilitate the polluter-pays principle by providing a mechanism that ensures environmental impacts caused by an activity are paid for by the person who caused the impacts. Environment protection bonds can also be referred to as a ‘security’ or ‘financial assurance’ and are subject to certain requirements. They are refundable at the completion of all remediation, rehabilitation and closure requirements specified for the activity.

An environment protection bond may be imposed on a person as a condition of an environmental approval associated with an activity. Under the arrangements of the Bill, a bond cannot be imposed if the person is required to provide another type of bond or security under other legislation for the same, or substantially the same, environmental impacts.

The Bill identifies that bonds can be paid as cash, a bank guarantee or in any other form of financial accommodation acceptable to the Minister of Environment and Natural Resources (the Minister). Any cash or tangible environment protection bond must be secured in a trust account established as the environment protection bond account by the Minister.

A bond can be used to pay:

* reasonable costs and expenses of taking action to prevent, minimise or remediate environmental harm resulting from the action under the environmental approval
* reasonable costs and expenses of taking action to complete rehabilitation of the site or any area affected as a result of the action under the environmental approval
* reasonable costs of post-closure reporting and monitoring and
* any amounts owing to the government for anything done under the Bill in relation to the obligations of the environmental approval holder.

Activities subject to environmental impact assessments often require monitoring and reporting work to continue after operations have ceased. This makes sure that the remediation and rehabilitation activities undertaken as part of closure plans, are performing as intended and the site is not posing any risks to human health or the environment. A bond can be held during any period that post-closure monitoring and reporting is required, but is to be repaid at the completion of those activities.

## Environment protection levy

An environment protection levy is a non-refundable payment made to government by industry participants to provide a revenue stream to support the industry to operate in a sustainable and environmentally responsible manner. As a levy is designed to address a particular environmental issue, the revenue government collects from levies is isolated from other government revenue streams and only permitted to be used for specific matters related to the industry responsible for paying the levy (e.g. to rehabilitate a historical landfill site).

The Bill provides the power to prescribe in regulations the persons, industry, actions, amounts and circumstances of any environment protection levy. The regulations may also prescribe how any levy may be paid and collected.

The Bill also identifies that no levy must be imposed on a person that is subject to pay another levy under another piece of legislation for the same, or substantially the same, environmental impacts, e.g. the mining levy under the Mining Management Act 2001.

While the Bill establishes a power to introduce levies, there are currently no proposals to do so.

## Environment protection funds

Environment protection funds are the accounts that are established to isolate, or ‘quarantine’ the revenue collected by government from environmental levies or other environmental management revenue streams. The primary purpose of environment protection funds is to hold revenue monies in trust, to be used only for permitted environmental management purposes by the Minister or Chief Executive Officer of the Department of the Environment and Natural Resources (CEO) of the responsible agency.

The Minister may establish one or more environment protection funds. A fund can be established specifically for different industries and the purpose of any established fund must be identified in the Government Gazette, along with the revenue streams that are allowed to be paid into the established fund.

The Bill stipulates that any investments made with money in an environment protection fund must be approved by the Northern Territory Treasurer, and any interest or other proceeds received from these investments must be paid into the fund that provided the initial money.

When establishing a fund, the Minister must identify how money held in the fund can be used, which may include:

* to take actions in the event of an environmental emergency
* to undertake remediation or rehabilitation works
* to conduct research into the environmental impacts of particular industries and management approaches
* research into the management of the environmental impacts of particular industries
* to reimburse any fees or amounts paid as a result of an enforceable undertaking if these were paid into the fund.

To protect the revenue held in environment protection funds, the CEO can recover certain spent amounts from the person that caused the need for the expenditure. This type of recovery would only occur where the expenditure was linked to a specific failure of the person to comply with the legislation.

## Fees

Fee for service provisions are applied to government activities in a manner that facilitates cost recovery in relation to the specific administrative and regulatory services provided.

Reviewing and assessing an environmental impact assessment requires considerable expertise and time by government agencies. These services also require expertise and time, and governments recognise that effective and efficient regulatory activities need to be financially resourced.

The Bill provides a power for fees to be applied for services provided by the Northern Territory Government in order to administer the Bill. These services provide a direct benefit to a person (i.e. the proponent of an activity) rather than the broader community. Fees for services promote equity by having those that gain benefit as the direct recipient of environmental impact assessment, bear the costs of the service rather than the general public.

There are currently no proposals to introduce fees for environmental impact assessment in the Territory.