

# Explanatory Statement

## ENVIRONMENT PROTECTION BILL 2019

### SERIAL NO. 94

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

### EXPLANATORY STATEMENT

#### GENERAL OUTLINE

This Bill establishes the *Environment Protection Act 2019*, and repeals the *Environmental Assessment Act 1982* and the *Environmental Assessment Amendment Act 1994*.

The purpose of this Bill is to support implementation of Government's environmental regulatory reform commitments by reforming the Territory's environmental impact assessment and approval process.

#### NOTES ON CLAUSES

##### PART 1 INTRODUCTION

##### Division 1 Preliminary matters

##### Clause 1. Short title

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Environment Protection Act 2019*.

##### Clause 2. Commencement

This clause provides for the commencement of the Bill. The Bill will commence on the day fixed by notice in the Government Gazette.

##### Clause 3. Objects

This clause establishes the objects of the Bill as:

- to protect the environment of the Territory
- to promote ecologically sustainable development so that the wellbeing of the people of the Territory is maintained or improved without adverse impact on the environment of the Territory

- to recognise the role of environmental impact assessment and approval in promoting the protection and management of the environment of the Territory
- to provide for broad community involvement during the process of environmental impact assessment and approval
- to recognise the role that Aboriginal people have as stewards of their country as conferred under their traditions and recognised in law, and the importance of participation by Aboriginal people and communities in environmental decision-making processes.

#### **Clause 4. Definitions**

This clause provides for a number of definitions which are required to assist in the interpretation of the Act.

The definitions are listed in alphabetical order and include a wide range of necessary legal definitions, as well as explanation of certain technical terms required by the Bill as part of the environmental impact assessment and approval system.

In particular, the clause includes a definition of 'proponent' which is a term used throughout the Act to refer to a person that intends to undertake an 'action' (defined in clause 5) and 'approval holder' which is a person that holds an environmental approval issued under the Act.

#### **Division 2 Important concepts**

This Division defines important concepts that are used throughout the Act and which need to be considered in applying the Act.

#### **Clause 5. Meaning of action**

This clause identifies the scope of the term 'action' which is used to identify the types of matters that need to be considered as part of the Territory's environmental impact assessment and approval system.

It is designed to ensure that individual or specific type actions are captured and require impact assessment. The clause operates in conjunction with clause 13 which provides for matters of a more strategic nature.

#### **Clause 6. Meaning of environment**

This clause defines the term 'environment' as it is used in the Act. Environment has a broad definition, and includes the biophysical environment as well as social, cultural, health and economic issues. This broad definition supports the concept of ecologically sustainable development and ensures that decisions are made in consideration of economic, cultural and social (including health) factors, and not just biophysical ones.

#### **Clause 7. Meaning of environmental harm**

This clause identifies how 'environmental harm' should be judged when considering impacts on the environment.

### **Clause 8. Meaning of material environmental harm**

This clause identifies how 'material environmental harm' is to be identified when considering impacts on the environment.

### **Clause 9. Meaning of significant environmental harm**

This clause identifies how 'significant environmental harm' should be judged when considering impacts on the environment.

### **Clause 10. Meaning of impact**

This clause identifies how 'impacts' are to be judged when determining if an action has had an impact on the environment.

### **Clause 11. Meaning of significant impact**

This clause identifies how 'significant impacts' are to be judged when determining if an action has had, or will have, a significant impact on the environment.

This judgement is an underlying principle of the environmental impact assessment system.

### **Clause 12. Meaning of significant variation**

This clause identifies how 'significant variations' are to be judged when determining if the proposed changes to an action are required to be considered under the environmental impact assessment system.

### **Clause 13. Meaning of strategic proposal**

This clause identifies the scope of the term 'strategic proposal' which is used to identify the types of matters that can be considered for a strategic environmental impact assessment under the environmental impact assessment and approval system.

It is designed to capture matters of a more strategic nature, such as groups of projects in a defined area or strategic programs of works or strategic planning instruments. The clause operates in conjunction with clause 5 which provides for matters of a more individualised or specific nature.

## **Division 3 Application provisions**

### **Clause 14. Act binds Crown**

This is a standard clause that provides that the Bill is intended to apply to the Crown.

### **Clause 15. Civil remedies and common law not affected**

This clause identifies that civil rights and actions are not affected by the Act, except where those rights are specifically provided for in the Act. It also identifies that compliance with the Act is not itself evidence that a common law duty of care has been satisfied.

The clause enables members of the community to pursue their own civil actions where they consider that there has been a breach of the legislation that has affected them.

## **Clause 16. Application of criminal code**

This clause provides that Part IIAA of the Criminal Code applies to offences under the Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

## **PART 2 PRINCIPLES OF ENVIRONMENT PROTECTION AND MANAGEMENT**

This Part identifies a number of principles that should be considered when decisions that have the potential to result in environmental impact are made by decision-makers, including the Minister, Northern Territory Environment Protection Authority (NT EPA) and Chief Executive Officer (CEO), proponents and approval holders.

### **Division 1 Principles of ecologically sustainable development**

#### **Clause 17. Principles of ecologically sustainable development**

This clause sets out the principles of ecologically sustainable development that a decision-maker must consider and apply when making a decision under the Act. The articulation of the principles supports the objects of the Act and is in keeping with contemporary environmental legislation. A decision-maker is not required to specify how the principles have been considered or applied when stating reasons for a decision.

#### **Clause 18. Decision-making principle**

This clause reiterates the meaning of 'environment' within decision-making processes and provides for the consideration of the long-term and short-term environmental and equitable implications of a decision. Where a decision will affect a community the decision-making process should incorporate community involvement.

#### **Clause 19. Precautionary principle**

This clause ensures that decision-making processes provide for the application of precautionary measures when making decisions where the scientific understanding of complex environmental systems is incomplete. The risk consequences of options being considered as part of the decision-making process should be evaluated in order to avoid decisions that could cause serious or irreversible damage to the environment.

#### **Clause 20. Principle of evidence-based decision-making**

This clause ensures that decisions are based on the best available evidence that is relevant and reliable.

#### **Clause 21. Principle of intergenerational and intragenerational equity**

This clause states that present-day decisions should not compromise environmental health, diversity or productivity for present or future generations.

#### **Clause 22. Principle of sustainable use**

This clause supports decision-making about the use of the Northern Territory's natural resources, ensuring that decisions examine whether the proposed use of the natural resource is sustainable, prudent, rational, wise and appropriate.

### **Clause 23. Principle of conservation of biological diversity and ecological integrity**

This clause articulates an outcome of decision-making under this Act, to conserve and maintain the Northern Territory's biological diversity and ecological integrity.

### **Clause 24. Principle of improved valuation, pricing and incentive mechanisms**

This clause ensures that the Northern Territory's accounting of its assets and services includes its environment. This places an expectation on the person who generates pollution and waste to bear the cost of its containment, avoidance and abatement while recognising that users of a product or service should be paying prices which reflect the cost of using natural resources and the cost of waste disposal.

This clause supports the provision of incentives, structures and mechanisms to minimise costs for proponents when developing solutions and responses to environmental problems.

## **Division 2 Management hierarchies**

### **Clause 25. Hierarchies**

This clause sets out the purpose of the Division to put in place hierarchies for environmental decision-making and waste management.

### **Clause 26. Environmental decision-making hierarchy**

This clause supports the objects of the Act by putting in place the approach to be taken by decision-makers, proponents and approval holders when making decisions in relation to actions that affect the environment. It supports environmental decision-making about a proposed action that not only seeks to minimise adverse impact on the environment, but also to identify and put in place measures that enhance or restore environmental quality where possible.

The clause establishes an approach to environmental protection that recognises that the upfront design of a proposed action is the best approach to minimising adverse impacts on the environment. The reliance on mitigation and the use of environmental offsets are to be secondary to project design when seeking to minimise adverse environmental impacts.

### **Clause 27. Waste management hierarchy**

This clause largely speaks to a proponent and places a focus on a proposed action being designed, implemented and managed to minimise waste creation and a pollution discharge to the environment. Avoiding production of waste is to be the priority for a proponent. The least preferred approach to be accepted by decision-makers is the reliance on waste disposal undertaken in an environmentally sound manner. This clause therefore seeks to address the real threat of waste disposal and discharge to the Northern Territory's environment.

## **PART 3 ENVIRONMENT PROTECTION DECLARATIONS**

### **Division 1 Declaration of environmental objectives and referral triggers**

#### **Clause 28. Declaration of environmental objectives**

This clause allows the Minister to declare environmental objectives under the Act. These will serve to guide decision-makers and provide a public statement of those priority environmental matters to be considered in the environmental impact assessment process.

The clause allows the Minister to initiate the process for declaring an environmental objective or respond to a recommendation of the NT EPA to declare environmental objectives. The process of declaring an environmental objective will be set out in the Regulations. When the Minister makes a declaration of environmental objectives it must be accompanied by a statement of reasons.

**Clause 29. Purpose and effect of referral triggers**

This clause supports the environmental impact assessment process by describing the purpose of a referral trigger. The clause describes two types of referral triggers - an activity-based referral trigger and a location-based referral trigger. This allows the Act to be responsive to key matters of concern, ensuring that specific types of activities (identified as an activity-based referral trigger) will be considered by the NT EPA as well as activity within identified areas of environmental significance.

**Clause 30. Declaration of referral triggers**

The clause enables the Minister to declare the referral triggers. The process of declaration will be established through the Regulations. When the Minister declares referral triggers it must be accompanied by a statement of reasons.

**Clause 31. NT EPA may recommend environmental objectives and referral triggers and amendments**

This clause allows the NT EPA to recommend environmental objectives or referral triggers to the Minister. This can be done on the NT EPA's initiative or at the request of the Minister.

**Clause 32. Review of environmental objectives and referral triggers**

This clause requires the review of the environmental objectives and referral triggers at least every 10 years, however they can be reviewed at any time. This ensures that the Act remains responsive and relevant in achieving the protection of the Northern Territory's environment.

**Clause 33. Amendment or revocation of environmental objective or referral trigger**

This clause allows the Minister to amend or revoke either an environmental objective or a referral trigger. The process for amending or revoking an objective or trigger will be established in the Regulations. This ensures the objectives and triggers remain relevant and responsive to the Northern Territory environment.

**Clause 34. Referral trigger – environmental offences**

This clause establishes five offences associated with undertaking an action where a referral trigger applies to the action where the action is not authorised. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where a person intentionally engages in unauthorised conduct that is part of an action, where a referral trigger applies, the conduct results in significant environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where a person intentionally engages in unauthorised conduct that is part of an action, where a referral trigger applies, the conduct results in material environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where a person engages in unauthorised conduct that is part of an action, where a referral trigger applies, and the conduct results in significant environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where a person engages in unauthorised conduct that is part of an action, where a referral trigger applies, and the conduct results in material environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 3 penalty.

Subclause (5) establishes an offence where a person engages in unauthorised conduct that is part of an action where a referral trigger applies. This is a strict liability offence, and the penalty for this offence is an environmental offence level 4 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that proponents refer their actions for impact assessment in accordance with the Act.

## **Division 2 Protected environmental areas and prohibited actions**

This division establishes processes to enable the Minister and Administrator to make declarations of protected environmental areas and prohibited actions.

### **Clause 35. Temporary declaration of protected environmental area**

This clause allows the Minister to make a temporary declaration of a protected environmental area. Before making the declaration the Minister must believe on reasonable grounds that the declaration is necessary to further the objects of the Act and protect the environment, or an aspect of the environment.

A protected declaration is valid for 12 months and cannot be extended. It can only be replaced if a period of at least 3 months has passed since the expiry of the previous declaration. This prohibition does not apply if different matters are being addressed under the declaration.

For example, the Minister may make a declaration of a protected environmental area between the NT mainland and Bathurst Island. The declaration may prohibit all seabed mining activities in this area. This would not prevent exploration for oil and gas in the same area. If the declaration expired (and was not replaced with a permanent declaration), the Minister could not make another declaration in the same area to prohibit seabed mining activities. The Minister could however make a new declaration that prohibited oil and gas exploration activities in that area.

These limitations have been included because a temporary declaration is designed to provide an urgent response that may be replaced by a permanent declaration by the Administrator.

The Minister is required to consult with the NT EPA before making a temporary declaration. Further consultation is not required due to the short term and, generally, urgent nature of these declarations. The Minister is required to advise land owners and occupiers of a declaration which affects their land and publish a statement of reasons for making the declaration.

### **Clause 36. Permanent declaration of protected environmental area**

This clause allows the Administrator to make a permanent declaration of a protected environmental area. Before making the declaration the Administrator must be satisfied that the declaration is necessary to further the objects of the Act and protect the environment, or an aspect of the environment.

The regulations will specify processes for making permanent declarations of protected environmental areas, which will include requirements for public consultation.

These declarations are designed to provide additional protection for areas of particularly high environmental value and give certainty to the community and proponents about the types of activities that will be allowed in those areas.

### **Clause 37. Regulation of actions in declared areas**

This clause identifies the different ways in which a declaration of an environmental protected area may be expressed. It allows declarations to:

- prohibit all actions, specific actions or classes of actions
- prohibit certain actions or classes of actions; for example, a declaration that prohibited all seabed mining related activities would not have any impact on commercial fishing activities
- permit certain actions or classes of actions; for example a declaration that permitted commercial fishing activities would mean that only those activities (and no other types of activities like seabed mining or oil and gas exploration) can be undertaken in the area
- specify thresholds for actions; for example a declaration could cap tourist numbers to a particularly sensitive area at 50 visitors per day.

The clause also identifies the matters that must be included in a declaration. This includes a description of the area, the day on and period for which the declaration has effect, and any actions permitted or prohibited in the declared area.

### **Clause 38. Declaration of prohibited actions**

This clause allows the Administrator to make a declaration prohibiting certain actions or classes of actions from being undertaken in the Territory. Before making the declaration the Administrator must be satisfied that the declaration is necessary to further the objects of the Act and protect the environment, or an aspect of the environment.

The clause identifies matters that must be included in the Administrators declaration, including a description of the prohibited actions, the day on which the declaration has effect, and the reason for the declaration.

These declarations are designed to give certainty to the community and proponents about the types of activities that will not be allowed in the Territory.

The regulations will specify processes for making these declarations.

### **Clause 39. Revocation of declaration**

This clause identifies that the Minister or Administrator (as appropriate) may revoke all or part of a declaration of a protected environmental area or prohibited action.

Before revoking a declaration the Minister and Administrator must be satisfied that the declaration is no longer in the interests of the Territory and that the revocation is not inconsistent with the principles of ecologically sustainable development and will not significantly undermine the objects of the Act.

The regulations will specify processes for revoking declarations.

#### **Clause 40. Protected environmental areas - environmental offences**

This clause establishes four offences associated with undertaking unauthorised actions in protected environmental areas. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where a person intentionally engages in conduct that is part of an action which is prohibited under the protected environmental area, the conduct results in significant environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where a person intentionally engages in conduct that is part of an action which is prohibited under the protected environmental area, the conduct results in material environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where a person engages in conduct that is part of an action which is prohibited under the protected environmental area and the conduct results in significant environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where a person engages in conduct that is part of an action which is prohibited under the protected environmental area. This is a strict liability offence, and the penalty for this offence is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that unauthorised actions are not undertaken in protected environmental areas.

#### **Clause 41. Prohibited actions - environmental offences**

This clause establishes four offences associated with undertaking actions that have been prohibited by a declaration under clause 38. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where a person intentionally engages in conduct that is part of a prohibited action, the conduct results in significant environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where a person intentionally engages in conduct that is part of a prohibited action, the conduct results in material environmental harm and the

person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where a person engages in conduct that is part of a prohibited action and the conduct results in significant environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where a person engages in conduct that is part of a prohibited action. This is a strict liability offence, and the penalty for this offence is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that actions that are prohibited are not undertaken.

## **PART 4 ENVIRONMENTAL IMPACT ASSESSMENT PROCESS**

This Part generally establishes requirements for the Northern Territory's environmental impact assessment process. It provides for a number of general matters associated with the purpose of impact assessments and role of proponents; the establishment of cooperative agreements to streamline processes for proponents that are undertaking actions that affect other jurisdictions; and the referral of actions, including significant variations to actions, to the NT EPA.

Detailed processes for impact assessment will be contained in supporting Regulations.

### **Division 1 Purpose of environmental impact assessment process**

This division establishes the general purpose of impact assessment and the role of proponents in the process.

#### **Clause 42. Purpose of environmental impact assessment process**

This clause identifies the purpose of environmental impact assessment. It has been included for certainty and clarity about what is expected of the assessment process.

#### **Clause 43. General duty of proponents**

This clause identifies the duties of proponents in the impact assessment process, and when designing projects. It highlights the proponent-responsibility approach of the Act.

#### **Clause 44. Certain referrals prohibited**

This clause places a prohibition on the referral of certain projects to the NT EPA by clarifying that projects cannot be referred if they are a prohibited action (declared under clause 38) or the type of action that is prohibited in a protected environmental area (Part 3, Division 2).

### **Division 2 Cooperative agreements**

This division establishes a system for cooperative assessments. It recognises that some actions may occur across, or have environmental impacts across borders, and seeks to limit the impost on proponents to undertake multiple assessment processes, without undermining environmental outcomes in the Territory. It is designed to enable bilateral agreements

between the Territory and states or trilateral agreements with the Commonwealth, and is not a replacement of or alternative to bilateral agreements established under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

#### **Clause 45. Cooperative agreements – assessment process**

This clause establishes a power for the Minister to enter into an agreement with another state and/or the Commonwealth to establish a single assessment process for an action that may affect the other jurisdiction.

It identifies that agreements must identify a process that will meet the objectives of the Act, be participatory, and result in the preparation of an assessment report.

The Minister will enter into an agreement on the advice of the NT EPA as the NT EPA is best positioned to identify when an agreement may be of benefit to the Territory, proponent and other jurisdiction.

#### **Clause 46. Proponent to have only one environmental impact assessment process**

This clause clarifies that the effect of an agreement under clause 45 is that the proponent will only be required to undertake one assessment process of the assessed action.

This does not prevent the proponent from being required to have further assessments if the action is significantly altered.

#### **Clause 47. Significant variation of action**

This clause is provided for certainty and identifies that an action that is significantly varied, and thus requires additional or further assessment, can be managed under the agreement established under clause 45. If that agreement has expired or been revoked then the variation must be assessed in accordance with the Act. This ensures that significant variations will be assessed, while recognising the value of a single assessment process to the proponent and jurisdictions.

### **Division 3 Referral and assessment**

This division establishes referral process for proposed actions.

#### **Subdivision 1 Referrals**

#### **Clause 48. Referral of proposed action**

This clause identifies that a proposed action must be referred to the NT EPA where that action has the potential for a significant impact on the environment or meets a referral trigger as declared under clause 30.

This places responsibility for making referrals on proponents, as part of the proponent-responsibility approach of the Act. In making referrals, proponents will be required to consider how significant impact is to be determined, as identified in clause 11, and will be provided guidance by the NT EPA.

#### **Clause 49. Referral of strategic proposal**

This clause identifies that a person may refer a strategic proposal. As identified in clause 13, strategic proposals are plans, programs, policies or methodologies. They are something of a strategic nature.

For example, a strategic assessment under this clause could consider a plan for the development of a new port facility and all its related infrastructure and would not focus on an individual component, like the establishment of a ship lift facility (which would be assessed under clause 48); or the development of a land use or development policy under the *Planning Act 1999*.

Unlike specific actions, there is no obligation to refer a strategic proposal. The benefit of referring a strategic proposal however is to limit the number of subsequently required referrals of specific actions.

A strategic proposal may be referred if the proposal will have the potential for a significant impact on the environment or will meet a referral trigger as declared under clause 30.

#### **Clause 50. Referral if application made to statutory decision-maker**

This clause gives certain powers to statutory decision-makers that may have been asked to approve a project. It allows those decision-makers to refuse to consider an application if they consider the action should have been referred to the NT EPA under this Act.

The clause requires those decision-makers to encourage the proponent to make the referral, and enables them to make a referral on behalf of the proponent should they chose to do so. Consistent with the proponent-responsibility approach of the Act, there is no obligation on statutory decision-makers to make referrals on behalf of proponents.

The clause operates to support other statutory decision-makers whose legislation may not contain 'stop the clock' provisions suitable to enable a decision to be deferred while an impact assessment process is undertaken.

#### **Subdivision 2 Significant variations**

##### **Clause 51. Proponent to notify NT EPA of significant variation of proposed action or strategic proposal**

This clause requires a proponent to refer to the NT EPA proposed significant variations to the action. Significant variations can be referred to the NT EPA at any stage of the assessment process.

This clause is intended to capture large variations of projects that will have new or different environmental impacts to those that are, or have been, considered during the assessment process. It is not intended to prevent proponents from making minor changes to project designs during assessment processes in response to feedback from the community and NT EPA.

##### **Clause 52. Approval holder to refer proposed significant variation for assessment**

This clause requires an approval holder, i.e. a person who has completed the assessment process and been issued with an environmental approval, to refer to the NT EPA proposed significant variations to the action.

This clause is intended to capture large variations of projects that will have new or different environmental impacts to those that were assessed and are being managed under the environmental approval. It is not intended to prevent proponents from making minor changes to project designs consistent with their environmental approvals.

### **Subdivision 3 Call-in notices**

#### **Clause 53. Call-in notice**

This clause provides the NT EPA with the power to “call-in” an action that has not been referred to it. The call-in power can be used when the NT EPA forms the reasonable belief that an action should have been referred for assessment – this would be based on the potential of the action to have a significant impact on the environment or because it likely meets a referral trigger.

The power applies to potential actions and to significant variations of actions, and these notices can be issued to both proponents and approval holders. Notices can be issued whether or not a statutory decision-maker has issued an authorisation for the action.

The clause also contains a requirement for the NT EPA to make reasonable efforts to seek the views of statutory decision-makers that may hold views in relation to the matter. These views should be sought before the call-in notice is issued.

Call-in notices provide a necessary safety net in the impact assessment process.

#### **Clause 54. Offence to contravene call-in notice**

This clause establishes an offence if the proponent or approval holder fails to comply with the call-in notice. It is a strict liability offence and attracts a penalty of 100 penalty units. This offence provides an incentive for the proponent or approval holder to comply with the notice and is a necessary offence to assist in ensuring compliance with the notice and the Act.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

### **Subdivision 4 Consideration by NT EPA**

#### **Clause 55. Process for considering referred actions and strategic proposals**

This clause requires the NT EPA to consider and deal with any referrals of actions or strategic proposals that it receives. The processes associated with dealing with referrals will be specified in Regulations. It also identifies the matters that can be included in regulations.

#### **Clause 56. Process for considering notified significant variations**

This clause requires the NT EPA to consider and deal with any referrals of significant variations that it receives. The processes associated with dealing with these variations will be specified in Regulations.

The clause acknowledges that significant variations may be submitted at various times during the assessment process, including after the completion of the assessment report but before the Minister issues an approval. If the NT EPA receives a significant variation at that time, it may determine to prepare a revised assessment report, issue an addendum to the report or prepare a new assessment report.

An addendum to the report is expected to be used where the NT EPA's proposed existing conditions on a draft approval are considered appropriate and adequate but there are matters that would benefit from further clarification and consideration in the assessment report. It may also be used where the NT EPA has prepared a statement of unacceptable impact but does not consider any amendments to that statement are required as a consequence of the variation.

A revised report or new report would be prepared where the variation identified more significant issues and the NT EPA considered that its proposed conditions of approval needed to be varied in order to ensure effective and appropriate management of the action. It would also be used where the NT EPA had prepared a statement of unacceptable impact that it considered needed to be amended, or could be withdrawn and replaced with a recommendation that the Minister grant an approval.

The Minister is required to consider any revised or new assessment report, approval or statement of unacceptable impact or addendum to an assessment report in their considerations under Part 5 of the Act.

#### **Subdivision 5 Environmental impact assessment by NT EPA**

##### **Clause 57. NT EPA to carry out environmental impact assessments of referred actions or strategic proposals**

This clause identifies that the NT EPA is required to conduct an impact assessment in accordance with the Regulations. It also identifies the matters that can be included in regulations.

#### **Subdivision 6 Statutory authorisations**

##### **Clause 58. Statutory authorisations and environmental impact assessments**

This clause identifies that a statutory decision-maker may receive and consider applications for statutory authorisations during the assessment process. This is included for certainty and in recognition that concurrent processing of applications can provide streamlining and reduce delays for proponents.

However, the clause prohibits statutory decision-makers from issuing authorisations until the assessment and approvals processes are complete. This is to limit the potential for proponents to receive authorisations containing inconsistent conditions regarding the management of environmental impacts.

The clause includes an exclusion that identifies that the prohibition does not apply to a statutory authorisation that is required in order to obtain information to inform the assessment process.

For example, while the clause would prohibit a Mining Minister from issuing a mining authorisation for a mining activity that was being considered in the impact assessment process, it would not prohibit the Controller of Water Resources from issuing a water investigation permit to identify potential water resources that could be used for that mining activity. The results of the water investigation would be used to inform the impact assessment process and could inform the development of proposed conditions for an environmental approval.

##### **Clause 59. Statutory authorisation granted before referral of action**

This clause recognises that in some circumstances a decision-maker may issue a statutory authorisation where an impact assessment is required. The clause identifies that the statutory authorisation is of no effect for the period during which the NT EPA is considering whether the action requires assessment, and if so, during the assessment and approval process. The authorisation is also not in effect if the NT EPA has issued a stop work notice in relation to the action.

This circumstance is most likely to arise where a matter has come to the attention of the NT EPA and it has issued a call-in notice.

The clause includes an exclusion that identifies that it does not apply to a statutory authorisation that is required in order to obtain information to inform the assessment process.

## **PART 5 ENVIRONMENTAL APPROVALS**

This Part establishes an environmental approval that may be granted by the Minister following completion of the environmental impact assessment process. It addresses all matters associated with granting (or refusing) the approval, amending, suspending or revoking, and transferring an approval. It also specifies how the Minister is to deal with a 'statement of unacceptable impact' which may be prepared by the NT EPA at the completion of the assessment process.

### **Division 1 Preliminary matters**

#### **Clause 60. Purpose of Part**

This clause identifies the purpose of this Part of the Act.

#### **Clause 61. Purpose of environmental approval**

This clause identifies the purpose of introducing an environmental approval process. The approval is to manage the potentially significant environmental impacts of an action.

#### **Clause 62. Fit and proper person to hold environmental approval**

This clause provides information on what matters should be considered when determining if the person is 'fit and proper' to hold an environmental approval.

### **Division 2 NT EPA to provide assessment report and other documents to Minister**

This division outlines processes associated with the NT EPA providing the Minister with a report of the outcomes of the environmental assessment process.

#### **Clause 63. Application of Division**

This clause identifies that the Division outlines the obligations of the NT EPA at the completion of the impact assessment process.

#### **Clause 64. Assessment report**

This clause identifies that the NT EPA must prepare an assessment report at the completion of the environmental impact assessment process.

Assessment reports provide information about the project, the potentially significant environmental impacts associated with the project, proposed processes to manage the significant impacts and other information that the NT EPA considers appropriate to inform the Minister's decision to grant, or refuse, an environmental approval.

#### **Clause 65. Draft environmental approval**

This clause identifies that it is the role of the NT EPA to prepare a draft environmental approval at the completion of the assessment process and provide this draft approval with its assessment report to the Minister. The NT EPA is not required to prepare a draft approval if it proposes to give the Minister a statement of unacceptable impact.

#### **Clause 66. Statement of unacceptable impact**

This clause acknowledges that there may be circumstances where the NT EPA considers that the potentially significant environmental impacts associated with an action cannot be appropriately avoided, mitigated and managed, or offset. In those instances it may consider that the Minister should not grant an approval due to the nature, context and extent of the environmental impacts. The NT EPA may prepare a statement of unacceptable impact specifying the nature of the potential impacts and why it is not appropriate to grant an approval.

#### **Clause 67. Notice of assessment report and other documents**

This clause requires the NT EPA to publish its assessment report, draft approval or statement of unacceptable impact as soon as practicable after providing the documents to the Minister. This clause has been included to improve certainty for the NT EPA about when documents should be published, and to improve transparency in the assessment system.

### **Division 3 Decision of Minister on environmental approval**

This division outlines processes associated with the Minister's decision to grant an environmental approval.

#### **Clause 68. Application of Division**

This clause identifies that the division applies to a draft environmental approval prepared by the NT EPA and given to the Minister under Part 5, Division 2.

#### **Clause 69. Decision of Minister in relation to draft environmental approval**

This clause identifies that the Minister may grant an approval as provided by the NT EPA, amend the NT EPA's proposed approval and grant the amended approval or refuse to grant the approval.

#### **Clause 70. Consultation on proposal to grant an amended approval**

This clause identifies that the Minister must consult with the NT EPA and statutory decision-makers where the Minister proposes to amend the draft approval. This ensures that all views are taken into consideration in the amendment of an approval.

The Minister is not required to consult if the Minister intends to grant the approval. Consultation at this stage is considered unnecessary as the regulations will require the NT EPA to consult with the proponent and other decision-makers when preparing the draft approval. Further consultation by the Minister would duplicate the earlier consultation and not reflect a streamlined process.

#### **Clause 71. Consultation on proposal to refuse to grant environmental approval**

This clause identifies that the Minister must consult with the NT EPA and statutory decision-makers where the Minister proposes to refuse to grant an environmental approval, where grant of the approval was recommended by the NT EPA. This ensures that all views are taken into consideration in the refusal of the approval.

This clause operates in conjunction with clause 72 which requires the Minister to give the proponent an opportunity to make submissions to the Minister about a proposal to refuse to grant an approval.

#### **Clause 72. Show cause process**

This clause establishes a 'show cause' process that the Minister must follow if they intend to refuse to grant an environmental approval where the NT EPA has prepared a draft approval. The process ensures that the proponent has had the opportunity to make submissions to the Minister about why it would be appropriate to issue an approval in accordance with the NT EPA's advice. It has been included to ensure that the proponent receives natural justice in the decision-making process.

#### **Clause 73. Matters to be considered by Minister in deciding on environmental approval**

This clause identifies the matters that the Minister must consider when deciding whether to grant or refuse the environmental approval. It includes the objects of the Act, the assessment report and whether or not the proponent is a 'fit and proper person'.

In addition to identifying matters that must be considered, the clause requires the Minister to be satisfied about certain things, including that there has been consultation with the affected communities, that the significant impacts have been avoided or can be appropriately mitigated and managed or offset. It is expected that the Minister would rely on the NT EPA's assessment report in order to satisfy themselves about these matters.

#### **Clause 74. Time for decision on environmental approval**

This clause identifies that the Minister must determine to grant or refuse the environmental approval within 30 business days of receiving the NT EPA's assessment report and draft approval. If the Minister does not make a decision in this timeframe, the approval is deemed to have been granted, and the draft approval (including its conditions) prepared by the NT EPA becomes the approval instrument.

Division 5 specifies processes associated with publishing the environmental approval and statements of reasons for decisions.

### **Division 4 Decision of Minister on statement of unacceptable impact**

#### **Clause 75. Application of Division**

This clause identifies that the division applies to a statement of unacceptable impact prepared by the NT EPA and given to the Minister under Part 5, Division 2.

#### **Clause 76. Minister's decision in relation to statement**

This clause identifies that the Minister must consider the NT EPA's assessment report and statement of unacceptable impact, and decide whether to accept the statement and refuse an environmental approval, or not accept the statement and grant an approval.

This clause also identifies the matters that the Minister must consider when deciding whether to accept or not accept the statement. It includes the objects of the Act and the assessment report.

The Minister is required to consult with other statutory decision-makers before deciding to accept a statement. This clause operates in conjunction with clause 78 which requires the Minister to give the proponent an opportunity to make submissions to the Minister about the acceptance of a statement.

Although the NT EPA is expected to consult with the proponent and other decision-makers in preparing a statement of unacceptable impact, given that its acceptance results in the refusal of an environmental approval, it is considered appropriate that the Minister conduct their own consultation before accepting the statement.

If the Minister decides not to accept a statement and instead to grant an approval, the clause requires the Minister to be satisfied about certain things, including that there has been consultation with the affected communities, that the significant impacts have been avoided or can be appropriately mitigated and managed or offset. As these matters would be contrary to the NT EPA's advice and assessment report, the Minister would be relying on external advice, such as from the proponent, other experts or Government departments in order to support this decision. The Minister must also be satisfied that the proponent is a 'fit and proper person'.

#### **Clause 77. Time for decision on statement of unacceptable impact**

This clause identifies that the Minister must determine to accept or refuse the statement of unacceptable impact within 30 business days of receiving the NT EPA's assessment report and statement. If the Minister does not make a decision in this timeframe, the Minister is deemed to have accepted the statement and environmental approval of the action is refused.

Division 5 specifies processes associated with publishing the statement of unacceptable impact and statements of reasons for decisions.

#### **Clause 78. Show cause process**

This clause establishes a 'show cause' process that the Minister must follow if they intend to accept a statement of unacceptable impact and refuse to grant an environmental approval. The process ensures that the proponent has had the opportunity to make submissions to the Minister about why it would be appropriate to issue an approval despite the NT EPA's advice. It has been included to ensure that the proponent receives natural justice in the decision-making process.

The clause contains an exclusion for judicial review of a decision to accept a statement of unacceptable impact where the Minister was deemed to have accepted the statement under clause 77. This has been included to avoid judicial reviews that result from a failure to comply with this show cause requirement where the Minister failed to make a decision in the required timeframe.

#### **Clause 79. Refusal of approval if Minister accepts statement**

This clause provides certainty that if the Minister accepts the statement of unacceptable impact then the Minister must refuse to grant an environmental approval.

The clause identifies that the Minister must prepare and publish a statement of reasons for the decision to refuse the approval and give the statement to the NT EPA, proponent and other decision-makers. The Minister's reasons may adopt or refer to the NT EPA's statement of unacceptable impact. This allows the Minister to rely on the statements made by, and reasoning of, the NT EPA in making their decision.

#### **Clause 80. Environmental approval granted if Minister rejects statement**

This clause provides certainty that if the Minister does not accept the statement of unacceptable impact then the Minister must grant an environmental approval.

The clause specifies that the Minister must consult with the NT EPA and other decision-makers in preparing an environmental approval. It also requires the Minister to issue the approval within 60 business days of refusing to accept the statement, providing certainty to proponents and the community about the completion of the approval process.

#### **Division 5 Publication of environmental approval**

This division specifies processes associated with publishing the statement of unacceptable impact and statements of reasons for decisions.

##### **Clause 81. Application of Division**

This clause identifies that the division applies to an environmental approval granted under Part 5. It applies to all approvals that are granted, whether or not the grant is consistent with the NT EPA's recommendations.

##### **Clause 82. Publication of environmental approval**

This clause identifies that the Minister is required to publish an environmental approval as soon as practicable after it is granted. Where an approval is deemed to be granted because the Minister has exceeded their decision-making timeframe, the CEO is responsible for publishing the approval.

The clause also identifies that the Minister is required to publish a statement of reasons for their decision to grant the approval. The statement of reasons must contain certain information relating to the recommendations of the NT EPA and its draft approval or statement of unacceptable impact.

If the approval is deemed to have been granted the CEO will prepare a statement to that effect and the Minister is not required to prepare a statement of reasons for the decision.

A copy of the approval and statement of reasons are to be given to the NT EPA, proponent and any statutory decision-maker that was consulted as part of the approval process.

This clause facilitates transparency and provides certainty about when publication is required to occur.

#### **Division 6 Conditions of environmental approval**

This division specifies a range of matters associated with imposing conditions on environmental approvals.

##### **Clause 83. Application of Division**

This clause identifies that the division sets out matters relating to conditions of environmental approval.

##### **Clause 84. Conditions of environmental approval**

This clause establishes a general power to for the Minister to impose conditions on an environmental approval. It also provides that it is a condition of an approval that the person complies with the approval and the Act, including its Regulations.

#### **Clause 85. Condition may apply after action completed**

This clause identifies that conditions may be expressed as continuing to comply after an action is 'complete'. For example, a condition on an environmental approval associated with the establishment and operation of a landfill may require ongoing monitoring and reporting of groundwater resources at the site even after the landfill stops accepting waste, is capped and closed. It may also require particular rehabilitation activities to continue to occur and be monitored at the site.

The clause is included for certainty.

#### **Clause 86. Conditions imposing financial requirements**

This clause identifies that the approval can contain conditions requiring the payment of environment bonds or levies (established under Part 7, Divisions 1 and 2 respectively).

The clause is included for certainty.

#### **Clause 87. Conditions requiring reporting of compliance with approval**

This clause identifies that the approval can contain conditions requiring certain matters to be reported to the CEO and that the CEO may require information to be published. These are measures to ensure transparency in the environmental impacts and outcomes of actions. This clause has been written in a manner that provides flexibility regarding reporting requirements, enabling these requirements to reflect the level of disturbance occurring as part of an approved action and the type and extent of environmental impacts.

The clause is included for certainty.

#### **Clause 88. Conditions relating to the management of health, social and cultural impacts**

This clause is linked to the definition of environment, which includes the natural environment as well as social, cultural and economic matters (see clause 6).

It is included for certainty and provides that an approval can contain conditions that are designed to mitigate and manage potential health, social or cultural impacts.

The clause identifies that a condition must not be imposed if there is other legislation in the Territory which could impose a similar condition through an authorisation (such as a licence). This limitation recognises that there is other legislation and regulatory regimes that may more appropriately manage health, social or cultural issues. For example, in accordance with this clause, the environmental approval would not be able to impose conditions associated with the management of sacred sites as this is more appropriately addressed through the *Northern Territory Aboriginal Sacred Sites Act 1989*. However, it would enable the approval to include a condition requiring the development and implementation of a social impact management plan as this is not a matter that is managed under other Territory legislation.

#### **Clause 89. Conditions of environmental approval – environmental offences**

This clause establishes four offences associated with failing to comply with the conditions on the environmental approval. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where an approval holder intentionally engages in conduct that contravenes a condition of the approval, the contravention results in significant

environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where an approval holder intentionally engages in conduct that contravenes a condition of the approval, the contravention results in material environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where an approval holder engages in conduct that contravenes a condition of the approval and the contravention results in significant environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where an approval holder engages in conduct that contravenes a condition of the approval. This is a strict liability offence, and the penalty for this offence is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that approval holders comply with the conditions of their approvals.

## **Division 7 Effect of environmental approval**

This division specifies a range of matters associated with the effect of an environmental approval on other statutory instruments.

### **Clause 90. Application of Division 7**

This clause identifies that the division sets out the effect of an environmental approval.

### **Clause 91. Effect of environmental approval**

This clause identifies that an environmental approval authorises the approval holder to undertake the action in accordance with the approval, its conditions and the requirements of the Act (which includes its Regulations).

The clause clarifies that the approval remains in force until it is revoked or expires, but is not considered to be in force during any period of suspension.

The clause is included for clarity.

### **Clause 92. Environmental approval to prevail over other statutory authorisations**

This clause establishes that the environmental approval has primacy over other approvals that may contain conditions to manage environmental impacts. It includes a prohibition on other statutory decision-makers to prevent them from imposing conditions to manage environmental impacts through their authorising instruments which is different to the conditions of the approval. It also identifies that an authorisation that is inconsistent with the environmental approval is of no effect to the extent of the inconsistency.

These clauses are particularly targeted at conditions that may relate to the natural environment, and are required to provide certainty and to minimise impacts on approval

holders from inadvertent inconsistencies that may arise from the issue of multiple authorisation instruments.

The clause specifically identifies that a statutory decision-maker is not prevented from refusing a statutory authorisation on the basis of a health, social or cultural impact.

To provide certainty, the clause identifies that a statutory authorisation is not inconsistent with the environmental approval if it imposes conditions relating to the environment that are more stringent than the matters contained in the approval or addresses matters not contained in the approval. This is necessary because the approval is designed to address significant environmental impacts, and other authorisations may address less significant impacts. For example, the impact assessment of a proposed landfill may have identified significant impacts associated with land clearing and the approval may impose conditions relating to the clearing of the land and the implementation of erosion and sediment controls. However, the assessment may have considered impacts to surface water to have been not significant and the approval may not impose any conditions relating to surface water. This would not prevent the grant of a licence to extract surface water for operations associated with the landfill.

#### **Clause 93. Environmental approval not personal property**

This clause has been included for certainty. It identifies that an environmental approval is not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth). This will ensure that approval holders cannot use the environmental approval as a form of security.

#### **Clause 94. Expiry of environmental approval**

As a general principle, and in accordance with clause 91, it is anticipated that the environmental approval will remain in force until the action is complete, unless it is revoked or suspended under Part 5, Division 10. This provides certainty to the approval holder that they will continue to be able to undertake the action once it has been commenced.

This clause identifies when this general principle does not apply. It establishes that the approval is to identify a time period during which the approval holder must take steps to commence the action. It prevents an approval holder from obtaining and 'banking' an approval. It ensures that when actions are commenced they are managed under the most practicable and leading conditions possible.

The clause recognises that the appropriateness of a time period is best determined with reference to the particular action. The clause therefore identifies matters that the Minister should consider in imposing a timeframe rather than specifying a particular time period.

The clause allows the Minister to extend the timeframe on application from an approval holder. However, at the latest, an application must be made within 12 weeks of the expiration of the approval. This is to ensure that approval holders are actively involved in considering and applying the approval and prevents an application for the 'reactivation' of an approval with outdated management options and conditions.

#### **Clause 95. Environmental approval revoked if amended approval granted**

This clause identifies that an environmental approval is considered revoked if an amended approval is granted. It is included for certainty.

## **Division 8 Approval notice for actions under environmental approval for strategic proposal**

This division establishes and describes processes associated with an approval notice. This is an instrument that enables a person to operate under, and in accordance with, an environmental approval that has been granted following the assessment of a strategic proposal.

### **Clause 96. Application of Division**

This clause identifies when an approval notice applies.

### **Clause 97. Purpose of approval notice**

This clause identifies the purpose of an approval notice. An approval notice is a specific type of approval that can be issued to any person that is intending to undertake an action within an area that has been assessed as part of a strategic proposal, provided that type of action was considered in the assessment and the assessment resulted in the grant of an environmental approval.

### **Clause 98. Application for approval notice**

This clause identifies when an application can be submitted for an approval notice. It requires that:

- the proposed action has been assessed as part of a strategic assessment
- an environmental approval has been granted on the basis of the strategic assessment
- the action fall within the scope of the actions that were assessed as part of the strategic assessment.

### **Clause 99. Minister may request further information**

This clause identifies that the Minister may request additional information to assist in the assessment of an application for an approval notice.

### **Clause 100. Consultation on application**

This clause identifies that before making a decision to grant an approval notice the Minister is to consult with the NT EPA and other statutory decision-makers.

### **Clause 101. Decision of Minister in relation to approval notice**

This clause identifies that the Minister may approve or refuse to grant an approval notice.

It also identifies that the Minister must be satisfied about certain matters, including that the action has been assessed as part of a strategic proposal and that the person is a fit and proper person to be granted an approval notice.

An approval notice cannot be granted if the environmental approval for the strategic assessment has been revoked or expired.

The Minister is required to make a decision within 60 business days of receiving the application. This provides certainty to the applicant.

### **Clause 102. Issue of approval notice**

This clause requires the Minister to advise the applicant, NT EPA, approval holder for the strategic proposal and statutory decision-makers of the decision to grant or refuse an application for an approval notice. This provides certainty about the grant of the notice.

### **Clause 103. Effect of approval notice**

This clause is provided for certainty. It identifies that a person who holds an approval notice is taken to hold an environmental approval for the purposes of undertaking the action approved by the notice.

### **Clause 104. Notice of refusal**

This clause is provided for certainty. It requires the Minister to give an applicant for an approval notice a statement of reasons for the decision.

### **Clause 105. Publication of notice and reasons**

This clause is provided for transparency and certainty. It requires the Minister to publish any approval notice and statements for reasons for issuing or refusing an approval notice. The documents are to be published as soon as practicable after the decision has been made.

## **Division 9 Amendment of environmental approval**

This division specifies matters associated with amending environmental approvals.

### **Clause 106. Amendment of environmental approval**

This clause specifies the circumstances in which the Minister may amend an environmental approval.

The Minister may make any amendments to the approval at the request of the approval holder. The Minister may also amend the approval on their own initiative in limited circumstances. These limited circumstances create a balance between the need to provide approval holders with certainty and the need to ensure that environmental impacts are managed appropriately and the environment is protected to the extent practicable.

The clause identifies that the Minister is to respond to a request for an amendment from an approval holder within 60 business days. This provides certainty to the approval holder that the request will be actioned in a timely way, while ensuring the Minister is provided with an appropriate opportunity to consider and receive advice in relation to the request.

### **Clause 107. Consultation on proposed amendment**

This clause identifies that the Minister must consult with the NT EPA and other statutory decision-makers before amending an approval at the request of the approval holder. If the Minister intends to amend the approval on their own initiative, they must also consult the approval holder.

By consulting with the NT EPA, the Minister can be assured that the proposed amendment is not a significant variation to the action. If in the opinion of the NT EPA, the amendment is reflective of a significant variation, it has prior notice of the variation and will be able to consult with the approval holder in more detail. If necessary, it will be able to 'call-in' the proposed variation.

### **Clause 108. Publication of amended environmental approval**

This clause identifies that the Minister must publish an amended environmental approval and the statement of reasons for making the amendment. Publication is to occur as soon as practicable after the approval is amended.

This clause facilitates transparency and provides certainty about when publication is required to occur and is consistent with the Minister's obligations to publish the original approval.

### **Division 10 Revocation or suspension of environmental approval**

This division specifies a range of matters associated with the revocation and suspension of environmental approvals.

#### **Clause 109. Revocation of environmental approval**

This clause specifies the circumstances in which the Minister may revoke an environmental approval.

The grounds for revocation are limited in order to balance the need to provide approval holders with certainty and the need to ensure that environmental impacts are managed appropriately and the environment is protected to the extent practicable.

Under this clause, revocation may occur where:

- New information becomes available that was not available at the time the Minister made the decision to grant the approval and it would have resulted in the approval not being granted. This is not intended to include information that was available but not brought to the Minister's attention, but rather new facts or information that is of significance. For example, the reclassification of a species from threatened to critically endangered.
- The Minister forms the opinion that the person is no longer fit and proper to hold the approval. This opinion must be based on the activities of the approval holder and their compliance history.
- The Minister forms a reasonable belief that the environmental impacts of the action cannot be appropriately avoided, mitigated and managed, or offset. For example, because the action cannot be redesigned in order to avoid or minimise the impacts on the habitat of a species reclassified from threatened to critically endangered.

The approval may also be revoked at the request of the approval holder. This is most likely to occur when the approval holder has determined not to proceed with the action or if the action is complete.

#### **Clause 110. Suspension of approval**

This clause identifies that as an alternative to revocation the Minister may suspend an environmental approval. Any suspension is for the period that is specified by the Minister in a suspension notice.

### **Clause 111. Show cause process**

This clause establishes a show cause process that must be followed before the Minister revokes or suspends an environmental approval. It is a standard process that ensures the approval holder is provided with procedural fairness in the decision-making process.

### **Clause 112. Notice to statutory decision-makers**

This clause requires the Minister to give statutory decision-makers notice of the Minister's intention to revoke or suspend an approval, and also to give notice if the revocation or suspension occurs.

This is included to ensure that other decision-makers that have an interest in the action are aware of the Minister's proposed actions and for transparency. It is not consultation on the exercise of the Minister's powers.

### **Clause 113. Obligations under approval to continue**

This clause identifies that an approval holder is obliged to continue to perform any obligations under an approval associated with minimising environmental impacts, remediation or rehabilitation even where the approval has been revoked or suspended. This obligation is to prevent additional or further environmental impacts resulting from inaction by the approval holder as a result the revocation or suspension.

The Minister is able to waive the requirement for an approval holder to continue their obligations if the Minister considers that it is appropriate to do so. For example, the Minister may waive a requirement where the Minister considers that any potential environmental impacts are negligible or where the Minister intends to take action themselves to address the environmental impacts.

### **Clause 114. Revocation at request of approval holder**

This clause specifies processes associated with revocation of an approval at the request of the approval holder, including requirements to consult with the NT EPA and other statutory decision-makers.

It identifies the Minister may revoke the approval if satisfied that it is no longer required because of the remediation, rehabilitation and closure requirements of the site have been met. The revocation does not prevent the Minister issuing a closure notice (under Part 9, Division 4) in relation to the site.

### **Clause 115. Strategic assessment - revocation of approval**

This clause has been included to provide certainty to persons that may be operating under an approval notice issued under Part 5, Division 8. It provides that an environmental approval that was issued following the assessment of a strategic assessment cannot be revoked unless all persons operating under that approval, including the original approval holder and approval notice holders, agree to the revocation.

It ensures that the approval holder and approval notice holders are not disadvantaged because of the actions of other persons operating under the approval.

### **Clause 116. Strategic assessment - revocation or suspension of approval**

This clause operates in conjunction with clause 113. It enables the Minister to take action against the approval holder of a strategic proposal or a person that holds an approval notice where appropriate without impacting other persons operating under the approval.

### **Clause 117. Contravention of continuing obligations – environmental offences**

This clause establishes four offences associated with failing to comply with their continuing obligations under an environmental approval that has been revoked or suspended. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where the person intentionally engages in conduct that contravenes their obligations, the contravention results in significant environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where the person intentionally engages in conduct that contravenes their obligations, the contravention results in material environmental harm and the person is reckless. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where the person engages in conduct that contravenes their obligations and the contravention results in significant environmental harm. This is a strict liability offence, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where the person intentionally engages in conduct that contravenes their obligations. This is a strict liability offence, and the penalty for this offence is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that measures to manage impacts and to remediate and rehabilitate impacts are undertaken.

### **Division 11 Transfer of environmental approval**

This division specifies a range of matters associated with transferring environmental approvals between original and subsequent approval holders.

#### **Clause 118. Transfer of environmental approval**

This clause establishes a power for the Minister to transfer an environmental approval.

#### **Clause 119. Application for approval to transfer**

This clause identifies the matters that must be included in an application to transfer an environmental approval.

It is a condition of a transfer that the proposed transferee agree to perform any obligation imposed on the approval holder under the approval. This is to ensure that the transfer does not result in reduced environmental outcomes.

#### **Clause 120. Minister may request information**

This clause identifies that the Minister may request additional information to assist in the assessment of the transfer application.

### **Clause 121. Minister may have regard to certain matters**

This clause identifies the matters that the Minister must consider when deciding whether to approve or refuse the transfer of the environmental approval. It includes the objects of the Act and whether or not the proposed transferee is a 'fit and proper person' to hold the environmental approval.

### **Clause 122. Consultation on transfer**

This clause identifies that before making a decision on a transfer the Minister is to consult with the NT EPA and other statutory decision-makers.

Under this clause, the Minister is also required to consult with the proposed transferee if the Minister proposes to refuse the approval or amend the approval as part of the transfer process.

### **Clause 123. Decision on transfer**

This clause identifies that the Minister may approve or refuse the proposed transfer. As part of approving a transfer, the Minister may amend the approval and its conditions. For example, an amendment might impose more stringent monitoring and reporting conditions based on a consideration of the environmental compliance history of the transferee.

The Minister is required to make a decision within 30 business days of receiving the transfer application. This provides certainty to the approval holder and proposed transferee about the transfer process.

### **Clause 124. Publication of approval of transfer and reasons**

This clause is provided for transparency and certainty. It requires the Minister to publish a decision and statements for reasons for approving or refusing the transfer of an environmental approval. The documents are to be published as soon as practicable after the decision has been made.

## **PART 6 ENVIRONMENTAL OFFSETS**

### **Clause 125. Environmental offsets framework and guidelines**

This clause identifies that the Minister may establish an environmental offsets framework. The framework can be applied to actions approved under this Act, and may be extended to apply to actions approved under other Acts (for example, the Planning Act) through the Regulations.

The clause identifies that the Minister's framework can require different types of offsets, and offsets for different classes of person or areas. The clause provides a broad power that will be used to develop a framework which is consistent with the environmental decision-making hierarchy of 'avoid, mitigate, offset'.

### **Clause 126. Environmental offsets register**

This clause requires the CEO to establish an environmental offset register that identifies all offset measures approved under this Act or another Act identified in the Regulations. The register will be made publicly available.

## **PART 7 FINANCIAL PROVISIONS**

### **Division 1 Environment protection bonds**

#### **Clause 127. Application of Division**

This clause identifies that the Division applies if a condition on an environmental approval (under clause 86) requires a person to provide an environment protection bond.

#### **Clause 128. Purpose of environment protection bond**

This clause identifies the purpose of environment protection bonds. These bonds are used to secure compliance with the Act and an environmental approval and to ensure that all appropriate remediation, rehabilitation and monitoring costs can be met. These bonds are designed to ensure that costs of environmental harm and impacts are borne by the approval holder and not Territorians.

#### **Clause 129. Amount of bond**

This clause specifies that the Minister must determine the amount of the environment protection bond to be provided. The amount can be specified as a particular sum or as a formula. It can also be recalculated at different times to reflect changes in the implementation of the action, and rehabilitation activities that have occurred.

The clause identifies that a bond may be provided in cash, by bank guarantee or by another form approved by the Minister. This is intended to enable innovative suggestions for how a bond can be provided, for example regular payments into an interest bearing fund established to hold the bond.

This clause identifies that the Minister cannot require a bond where a bond or other form of financial security is required to be provided under another Act for the same or substantially the same environmental impacts. This has been included in recognition of the requirement for the mining industry to pay a mining security under the Mining Management Act 2001. It is intended to protect the industry from paying two bonds for the same environmental impacts arising from mining activities, such as the establishment of tailings facilities. It does not prevent the imposition of two bonds for different environmental impacts, such as those that might be associated with the undertaking of a non-mining activity on the mining site.

#### **Clause 130. Environment protection bond account**

This clause establishes that the Minister is to hold any bond that is provided in the form of cash or cheque in a trust account established for that purpose. It limits payments from the trust account to those required to refund the bond or in response to a claim on the bond under clause 131.

#### **Clause 131. Claim on bond**

This clause specifies that the Minister or CEO may make a claim on an environmental bond. The process for making a claim will be specified in the regulations. The claim cannot exceed the reasonable costs and expenses of the Minister or CEO incurred under clause 128, for example, those associated with carrying out action to complete remediation or rehabilitation activities or to undertake post closure rehabilitation monitoring.

#### **Clause 132. Unused bond refundable**

This clause identifies that a bond is to be refunded once all remediation or rehabilitation requirements specified in the environmental approval have been complied with. It provides that money can be withheld from the bond if the approval holder has an outstanding debt to

the Territory, for example, an outstanding order for reimbursement of costs following proceedings under Parts 10 or 11.

## **Division 2 Environment protection levy**

### **Clause 133. Environment protection levy**

This clause identifies that the Minister may establish environment protection levies. Levies are taxes that are imposed to provide funds for specific purposes.

The clause identifies that a levy can be imposed for a number of purposes associated with remediating and rehabilitating the environment, and limiting the impacts of particular activities on the environment. Most commonly levies are used to raise funds to manage historical environmental impacts or harms caused by particular types of industry or activities, such as those associated with mining, petroleum or waste (e.g. landfill levies).

However, levies can also be used to proactively provide funding to address future potential environmental impacts or to limit potential future impacts. The clause therefore identifies that the levy can be used for research purposes to assist industries to manage environmental impacts where existing methodologies are inappropriate or substantially ineffective.

### **Clause 134. Liability for environment protection levy**

This clause identifies that a person must pay an environment protection levy if they are in the class of persons prescribed by regulations to pay the levy.

It also identifies that a levy cannot be imposed where another levy is charged under another Act for the same or substantially the same environmental impacts. This has been included in recognition of the requirement for the mining industry to pay a mining levy under the *Mining Management Act 2001*. It is intended to protect the industry from paying two levy amounts for the same environmental impacts arising from mining activities, such as the establishment of tailings facilities. It does not prevent the imposition of a levy associated with non-mining activities that may occur on the mining site.

### **Clause 135. Amount of levy**

This clause identifies that the regulations can specify a number of matters associated with the introduction of levies, including how they are to be calculated and collected. A levy is not refundable.

## **Division 3 Environment protection funds**

### **Clause 136. Minister may establish environment protection funds**

This clause identifies that the Minister may establish one or more environment protection funds. These funds are intended to hold money that can be used to undertake rehabilitation or remediation work, research and other activities that enhance or protect the environment.

### **Clause 137. Payments into environment protection funds**

This clause identifies the types of payments that can be made into a fund established under clause 136. These include money raised through levies, costs recovered through civil or criminal proceedings under Part 10 or Part 11, fees that may be charged under the Act and other costs that may be paid to the CEO under the Act.

The clause identifies that the Treasurer is responsible for approving investment proposals for the fund, and that money from investment is to be paid into the fund. This will enable the funds to grow over time providing further resources to undertake the activities for which the fund was established.

#### **Clause 138. Expenditure from an environment protection fund**

This clause identifies that the Minister must, by Gazette notice, identify the purposes for which money can be expended from a particular environment protection fund. The purposes can only include matters specified in clause 136(3), or for the reimbursement of any fee paid into the fund, or the reimbursement of any amount paid into the fund in accordance with an enforceable undertaking. This ensures that the money used in the fund is used only for its intended purpose.

#### **Clause 139. Recovery of amounts paid out of fund**

This clause identifies that a person can be required to repay money into the fund if the fund was used to undertake activity to remediate, rehabilitate or protect the environment or in an emergency. This clause is intended to operate where a person has taken specific actions that have resulted in unauthorised environmental impact and action by the CEO is necessary to limit resulting environmental harm. It ensures that money taken from the fund is reimbursed to the extent possible to enable the fund to be used to address historical remediation or rehabilitation requirements. This clause is not intended to provide an opportunity to recover costs for activities for which a levy has also been collected.

Any amount recovered as a debt to the Territory must be repaid into the relevant fund.

## **PART 8 ENVIRONMENTAL AUDITS, ENVIRONMENTAL AUDITORS AND ENVIRONMENTAL PRACTITIONERS**

### **Division 1 Preliminary matters**

#### **Clause 140. Relationship of this Part to other provisions**

This clause has been included to clarify that this Part does not affect the operation of any conditions on an environmental approval that may relate to monitoring, testing or reporting.

#### **Clause 141. Environmental audit**

Environmental audits are used to assess impacts on the environment.

This clause identifies the types of audits that may be required under the Act. There are a number of different matters that can be investigated as part of an audit. These include actual environmental impacts of certain activities, through to the accuracy of forecasts in an environmental impact assessment of the potential environmental impacts of the action.

### **Division 2 Environmental audit requirements**

This Division establishes a system of environmental audits. Audits are a mechanism to obtain information to improve the understanding of the environmental impacts of specific actions.

#### **Clause 142. Direction by CEO to carry out environmental audit**

This clause identifies that circumstances in which the CEO may direct an approval holder to undertake an environmental audit. The CEO's powers to direct an audit are limited to where the CEO reasonably believes or suspects that an approval holder has, or is likely to, contravene the environmental approval. The costs of meeting the audit are the responsibility of the approval holder.

#### **Clause 143. CEO may appoint qualified person to carry out environmental audit**

This clause provides a broad power for the CEO to appoint a person to undertake an audit.

The CEO may exercise this power irrespective of whether they have formed a belief about the actions of the approval holder. If the CEO uses this power, then costs associated with an audit would be met by the CEO.

#### **Clause 144. Environmental audit and report**

This clause identifies that audits must be completed to the satisfaction of the CEO. This ensures that the CEO obtains the information they were seeking from the audit, even where the audit was arranged by the approval holder at the CEO's direction.

#### **Clause 145. Contravention of direction – environmental offence**

This clause creates an offence for failing to comply with a direction to have an environmental audit completed. It is a strict liability offence and attracts an environmental offence level 3 penalty. The clause contains standard defences for this type of offence.

#### **Clause 146. Offence relating to conflict of interest**

This clause establishes that is an offence for a qualified person to conduct an audit if they have a conflict of interest. This is important to ensure confidence in the auditing process.

The offence attracts a penalty of 100 penalty units or 12 months imprisonment.

The offence does not apply if the person was authorised to conduct the audit despite the conflict of interest.

#### **Clause 147. Authorisation of audit despite conflict**

This clause enables the CEO to authorise a qualified person to conduct an audit despite a conflict of interest. It recognises the close relationships in the Territory and the difficulties that can be experienced in accessing persons with specialist skill sets.

#### **Clause 148. Nature of conflict of interest**

This clause identifies when a conflict of interest is considered to arise for the purposes of conducting environmental audits. It includes direct interests, whether monetary or professional, as well as associated interests, such as relationships between corporate entities.

#### **Clause 149. Qualified person may direct information to be provided**

This clause provides the person undertaking the audit with powers to require information from the person being audited. It is necessary to ensure that audits are informed by appropriate and relevant information. It applies whether the approval holder has arranged the audit or the CEO has appointed the person to conduct the audit.

#### **Clause 150. Declarations in relation to environmental audit reports**

This clause requires audit reports to be accompanied by declarations by the approval holder and person who conducted the audit as to the accuracy of the information contained in the report. It provides an accountability measure regarding the statements contained in the report. It is a standard clause of this nature in environmental legislation.

#### **Clause 151. Contravention of direction to provide relevant information – environmental offences**

This clause establishes two offences for failing to comply with a direction to provide information required for an audit under clause 149. It provides a standard approach to creating tiered offences that reflect differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where the person is reckless in their failure to comply with the direction. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (2) establishes an offence where the person fails to comply with a direction. It is a strict liability offence, and attracts an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences support the environmental auditing provisions by creating an incentive for a person to comply with a direction to provide information.

#### **Clause 152. Offence if false or misleading information in audit report or missing information**

This clause establishes an offence associated with a qualified person providing false or misleading information in an audit report. The offence does not apply if the qualified person brought any false or misleading aspects of the report to the CEO's attention when submitting the report.

Due to the potentially serious environmental consequences associated with providing false or misleading reports, the offence attracts a penalty of 500 penalty units or 2 years imprisonment.

#### **Clause 153. Retention and production of audit documentation**

This clause requires an approval holder to retain audit documents for specified periods. This ensures that information relating to the audit is kept by the approval holder and is available if required by the CEO.

#### **Clause 154. Contravention of direction – environmental offences**

This clause establishes two offences for failing to comply with a direction to provide audit information that was to be retained under clause 153. It provides a standard approach to creating tiered offences that reflect differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where the person is reckless in their failure to comply with the direction. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (2) establishes an offence where the person fails to comply with the direction. It is a strict liability offence, and attracts an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences support the environmental auditing provisions by creating an incentive for a person to comply with a direction to retain audit documentation and provide that documentation when directed to do so.

### **Division 3 Registration of environmental auditors**

This Division establishes matters associated with the registration of environmental auditors. Auditors are persons with appropriate qualifications to assess environmental impacts and environmental harm. Auditors work within a particular sphere of expertise; for example, assessment of contaminated land, or identification of the impacts of pollutants being emitted to air.

#### **Clause 155. Offence to represent that registered as auditor**

This clause specifies that it is an offence for a person to represent that they are a registered environmental auditor. It imposes a penalty of 100 penalty units or 12 months imprisonment.

#### **Clause 156. Registration of environmental auditors**

This clause establishes a power for the Regulations to create a registration scheme for environmental auditors. As part of this scheme, it enables the adoption of a register or other form of record of environmental auditors approved by another jurisdiction.

### **Division 4 Registration of environmental practitioners**

This Division establishes matters associated with the registration of environmental practitioners. Practitioners are persons with appropriate qualifications to collect information and data and assess particular aspects of the environment. Practitioners are required to be certified to work within their areas of expertise; for example, certain activities to identify and classify soils can only be undertaken by certified soil scientists.

#### **Clause 157. Offence to represent that registered as environmental practitioner**

This clause specifies that it is an offence for a person to represent that they are a registered environmental practitioner. It imposes a penalty of 100 penalty units or 12 months imprisonment.

#### **Clause 158. Registration of environmental practitioners**

This clause establishes a power for the Regulations to create a registration scheme for environmental practitioners. As part of this scheme, it enables the adoption of a register or record of environmental practitioners approved or certified by another jurisdiction or entity.

## **PART 9 ENFORCEMENT**

### **Division 1 Environmental officers**

#### **Clause 159. Appointment or authorisation of environmental officers**

This clause allows the CEO to appoint a person to be an environmental officer. Environmental officers are provided with a number of powers that enable them to investigate and enforce potential breaches of the Act.

The clause identifies that police officers are automatically identified as environmental officers for the purposes of the Act.

#### **Clause 160. Identity cards**

This clause requires the CEO to issue appointed environmental officers (which do not include police officers) with an identity card.

The card provides evidence of the persons appointment, providing members of the community and approval holders with certainty about whether a person has the authority to be investigating an alleged breach of the Act. The clause specifies that a card must include a photograph of the officer, the card's date of issue and be signed by the officer.

An environmental officer is required to show the identity card if requested to do so by a person who is affected by the officers exercise of a power and performance of a function.

#### **Clause 161. Offence not to return identity card**

Environmental officers are required to surrender their identity cards within 15 business days of ceasing to be an officer. This is a strict liability offence which has a penalty of 20 penalty units.

#### **Clause 162. Powers of environmental officers: purposes**

This clause identifies that environmental officers may do anything, or cause anything to be done, or take any action the officer reasonably believes is necessary for the purpose of exercising a power or function under the Act. This includes monitoring compliance with the Act and investigating suspected breaches of the Act.

#### **Clause 163. General powers of environmental officers**

This clause identifies a number of specific powers held by environmental officers in order to enable them to monitor compliance with the Act and investigate suspected breaches.

In addition to activities that officers may do themselves, such as taking photographs or samples, the clause allows an officer to authorise another person to assist them in exercising their powers and functions. For example, an officer may engage a person to operate equipment or machinery in order to investigate and sample an illegal waste dump.

The clause also allows the officer to require a person, such as an approval holder, to provide assistance, for example by entering passwords in order to access material stored on a computer or in 'the cloud'.

#### **Clause 164. Entry of residential premises**

This clause identifies that an environmental officer must seek the consent of an occupier before entering residential premises. This limitation ensures that a persons' private place of

residence is not subject to unreasonable interference. It operates in conjunction with clause 170.

Residential premises is defined in clause 4 of the Act. This definition identifies that where premises are used for both residential and non-residential purposes, only that part of the premises which is used for residential purposes is to be considered as 'residential premises'. This provides clarity that an officer may enter and remain on property and enter parts of buildings or other structures that may be associated with residential premises in order to complete investigation and monitoring activities.

#### **Clause 165. Entry on Aboriginal land**

This clause allows environmental officers to enter Aboriginal land in order to exercise their powers and functions without a requirement to hold a permit issued under the *Aboriginal Land Act 1978*.

#### **Clause 166. Duties of environmental officer on land or premises**

This clause identifies that environmental officers must take reasonable steps to minimise any disruption that may be caused from entering land or premises for the purposes of exercising powers and functions, and also to only remain on the land or premises for the period required to fulfil powers and functions.

It recognises that while environmental officers require access to land and premises in order to fulfil their duties, they should be doing their best to minimise interference caused to the owner or occupier of the land.

#### **Clause 167. Duty of environmental officer in relation to seized thing**

Under clause 163, an environmental officer may seize items, such as computers, that are necessary in order to investigate suspected breaches of the Act.

This clause imposes requirements on the officer in dealing with those seized items, including that the person is issued with a receipt in relation to the seizure.

Seized items must be returned after 3 years (which is the period in which enforcement action for an alleged breach of the Act can be commenced), or if enforcement action is commenced, 12 months after the completion of all legal processes associated with that action. Items must be returned if the officer no longer considers retention of the item is necessary for evidentiary reasons.

An officer may only permanently retain a seized item if they believe, on reasonable grounds, that it is necessary to prevent the items use in committing an offence.

This clause ensures that seized items are returned to their owners as soon as reasonably practicable.

#### **Clause 168. Forfeiture of seized thing**

This clause provides the Court with powers to order that seized items are forfeited to the Territory. It also allows the CEO to destroy or otherwise dispose of the item that has been forfeited. The clause is in addition to any other powers the court may have under this Act and other laws relating to forfeiture of items.

### **Clause 169. Offence to contravene requirement**

This clause establishes an offence for failing to comply with a requirement of an environmental officer under clause 163. This is a strict liability offence, with a maximum penalty of 100 penalty units.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

### **Clause 170. Application for and issue of search warrant**

This clause operates in conjunction with clause 164. It allows an environmental officer to apply to a justice of the peace for a search warrant to enter land or premises, and is specifically included for the purposes of authorising entry into residential premises.

This clause acknowledges that interference with a persons' premises, including their residential premises, should be limited but is necessary in some circumstances.

### **Clause 171. Effect and term of search warrant**

This clause identifies that a search warrant remains in force for 30 business days from its date of issue and confirms that the effect of the warrant is to allow the environmental officer to enter the land or premises specified in the warrant and to exercise their powers in relation to that land or premises.

### **Clause 172. Directions by environmental officer**

This clause gives an environmental officer the power to issue directions to another person. Directions can be used as an alternative to, or in addition to, the officer exercising powers under clause 163.

Directions can require the person to take, or not take, specified actions in order to limit environmental harm and impacts on the environment. Directions must not be inconsistent with an environmental approval or the requirements of the Act.

### **Clause 173. Offence to contravene direction**

This clause establishes an offence for failing to comply with a direction given by an environmental officer. This is a strict liability offence, with a maximum penalty of 100 penalty units.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

### **Clause 174. Offence to obstruct environmental officer**

This clause establishes an offence for intentionally obstructing another person from complying with a direction given by an authorised officer. The offence contains strict liability elements and attracts a maximum penalty of 200 penalty units or 2 years imprisonment.

### **Clause 175. Compliance with requirement to provide information**

This clause identifies that a person is required to comply with a requirement to provide information under clause 163 or 172(1) even if providing the information may incriminate the person. It is an abrogation of the right against self-incrimination which is necessary in order to effectively investigate potential breaches of the Act and minimise environmental impact or harm that can result from unauthorised activities.

The clause provides a protection for individuals who are required to provide the information by identifying that any information that is provided in response to the requirement cannot be used as evidence against the individual for an offence or civil penalty.

This does not prevent the use of material that may be identified as a consequence of the information that was provided from being used as evidence in criminal or civil proceedings. It also does not prevent the use of the information that is provided by a body corporate against that body corporate.

The clause does not apply to any proceedings relating to false or misleading information as the information supplied may form the basis of those proceedings.

## **Division 2 Environment protection notices**

This division establishes a system of environment protection notices that can be issued by the CEO or an environmental officer to ensure compliance with the Act or an environmental approval in order to minimise unauthorised environmental impacts.

### **Clause 176. Environment protection notice – purpose and issue**

This clause establishes the purpose of environment protection notices which is to secure compliance with an environmental approval or another requirement which may be prescribed in the Regulations.

### **Clause 177. Content of environment protection notice**

This clause identifies the matters that must be included in an environment protection notice, including the purpose of the notice and the matters or conditions that must be complied with. The notice must also advise the person issued with the notice that they can request the Northern Territory Civil and Administrative Tribunal (NTCAT) review the decision to issue the notice.

### **Clause 178. Requirements of environment protection notices**

This clause identifies the types of requirements that can be imposed under an environment protection notice. It includes a requirement for a person to cease particular activities, or place controls on those activities, or prepare plans to minimise and respond to environmental impacts. The notice can also require specific monitoring and reporting be undertaken.

### **Clause 179. Environment protection notice may permit certain acts or omissions**

This clause clarifies that an environment protection notice may include a requirement that a person do something, or not do something, that would otherwise be a contravention of the Act.

This power would be used where the environmental or human health impacts that may result from the action or inaction are preferable to those that would occur if the person complied with the Act.

A person is not liable for a penalty if they comply with the environment protection notice.

### **Clause 180. Effect of environment protection notice on need for statutory authorisation**

This clause clarifies that a person is not required to seek a separate statutory authorisation if they have been issued with an environment protection notice requiring them to take certain action. This ensures that environment protection notices can operate to minimise unauthorised environmental impacts without delay.

A person is not liable for a penalty if they comply with the environment protection notice.

### **Clause 181. Notice to prescribed statutory decision-maker of proposed notice**

This clause operates in conjunction with clauses 179 and 180. It requires the CEO to advise a statutory decision-maker that the CEO intends to issue an environment protection notice for an action that would otherwise require approval from the statutory decision-maker. This ensures that statutory decision-makers are aware of the environment protection notice and the potential for actions to be taken to protect the environment.

The clause requires the CEO to give the statutory decision-maker 14 business days' notice of the intention to issue the environment protection notice, except where an emergency environment protection notice has been issued.

The CEO is not required to provide notice in advance of issuing an emergency environment protection notice, however must give the statutory decision-maker 24 hours notice if the CEO intends to confirm an emergency notice.

### **Clause 182. Emergency environment protection notice issued by CEO**

This clause allows the CEO to issue emergency environment protection notices in certain circumstances. Before issuing an emergency notice, the CEO must reasonably believe that urgent action is required to protect the environment from significant environmental harm and that there are grounds for revocation of the environmental approval.

The clause identifies that the notice can include the requirements set out in clause 178. The notice must also advise the person issued with the notice that they can request the Northern Territory Civil and Administrative Tribunal (NTCAT) review the decision to issue the notice.

Emergency environment protection notices are time limited to a period of 10 business days, after which time they cease unless action has commenced to revoke the environmental approval. If action is taken to revoke the approval, the notice remains in force until processes associated with the revocation are complete or the CEO determines to revoke the notice.

These notices recognise that urgent action may be required in some circumstances, but that the exercise of powers to prevent the exercise of authorised activities should be strictly controlled.

### **Clause 183. Emergency environment protection notice issued by environmental officer**

This clause allows an environmental officer to issue an emergency environment protection notice where the officer reasonably believes that urgent action is required to protect the environment.

The clause identifies that the notice can include the requirements set out in clause 178. The notice must also advise the person issued with the notice that they can request the Northern Territory Civil and Administrative Tribunal (NTCAT) review the decision to issue the notice. Emergency notices can be issued verbally but must be confirmed in writing.

Emergency environment protection notices issued by environmental officers are time limited to a period of 72 hours, after which time they cease unless the CEO has confirmed the notice in writing.

These notices recognise that urgent action may be required in some circumstances, but that the exercise of powers to prevent the exercise of authorised activities should be strictly controlled.

#### **Clause 184. Variation or revocation of environment protection notice**

This clause clarifies that the CEO may vary or revoke an environment protection notice. The CEO must advise each person that is bound by the notice about any variation or its revocation.

This allows notices to be amended to ensure that they are practical and capable of ensuring the desired environmental protection outcomes.

#### **Clause 185. Copy of environment protection notice may be lodged with Registrar-General**

This clause allows the CEO to lodge a copy of an environment protection notice with the Registrar-General and to have the notice held against land title. This provides certainty for the land owner and future land buyers about activities that have occurred on the land and any ongoing obligations associated with those activities.

#### **Clause 186. Recorded notice applies to owners and occupiers of land**

This clause clarifies that an environment protection notice that is recorded on the land title applies to the owners and occupiers of the land.

#### **Clause 187. Notice to owners and occupiers of land**

This clause requires the CEO to advise land owners and occupiers about any environment protection notices that may be recorded on the land title. The CEO is to give this advice as soon as practicable after the notice is recorded.

This ensures that land owners and occupiers are aware of the notice, and also of their obligations under the notice.

The clause also identifies that an owner or occupier may request the Northern Territory Civil and Administrative Tribunal (NTCAT) review the decision to record the notice against the land title.

#### **Clause 188. Notice by owner or occupier to CEO**

This clause requires an owner or occupier to advise the CEO if they sell or otherwise dispose of the land. This enables the CEO to take steps to ensure that the new owner or occupier is aware of the environment protection notice and their obligations in respect of the notice.

#### **Clause 189. Offence to contravene notice requirement**

This clause establishes an offence if the owner or occupier of land fails to give notice to the CEO about the sale or otherwise disposal of the land. It is a strict liability offence and attracts a penalty of 100 penalty units. This provides an additional incentive for the owner or occupier to comply with their notification obligations.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

#### **Clause 190. Cancellation of recording of environment protection notice**

This clause enables the CEO to apply to the Registrar-General to cancel a recording of an environment protection notice, and obliges the Registrar-General to effect the cancellation if an application is received.

The clause also identifies the CEO must apply to cancel a recording when the notice has been revoked, or fully complied with, or in accordance with a direction from the NTCAT.

#### **Clause 191. Contravention of environment protection notice – environmental offences**

This clause establishes four offences for failing to comply with an environment protection notice. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where a person has been issued with an environment protection notice, the person is reckless in their failure to comply with the notice, and the contravention results in significant environmental harm. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where a person has been issued with an environment protection notice, the person is reckless in their failure to comply with the notice, and the contravention results in material environmental harm. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where a person has been issued with an environment protection notice, the person fails to comply with the notice, and the contravention results in significant environmental harm. This is a strict liability offence, and the penalty is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where a person has been issued with an environment protection notice and fails to comply with the notice. This is a strict liability offence, and the penalty is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, to minimise environmental impacts and to minimise the financial benefit of proponents by taking unauthorised actions.

#### **Clause 192. Obstruct compliance with notice – environmental offence**

This clause establishes an offence for intentionally obstructing another person from complying with an environment protection notice. The penalty is an environmental offence level 2 penalty.

The clause contains standard defences for an offence of this nature, and requires the defendant to establish the defence.

### **Division 3 Stop work notices**

This Division establishes a system of stop work notices issued by the NT EPA. These notices are used to restrain a proponent from undertaking work during the impact assessment and approval process. They are a compliance measure to support the impact assessment and approval system.

#### **Clause 193. Purpose of stop work notice**

This clause establishes the purpose of stop work notices which is to:

- prevent or minimise environmental impacts and
- minimise financial benefits that a proponent may obtain by undertaking action prior to completing assessment and approval processes.

#### **Clause 194. NT EPA may issue stop work notice**

This clause identifies that the NT EPA may issue a stop work notice. The notice can be issued to a proponent or approval holder that has referred an action or significant variation of an action, and also to a proponent or approval holder that has been issued with a call-in notice.

The notice can be issued at any stage of the assessment and approval process if the NT EPA considers that it is appropriate to issue the notice because of the actions of the proponent.

#### **Clause 195. Requirements of stop work notice**

This clause identifies that the NT EPA can impose conditions on the notice to:

- prevent or minimise environmental impacts
- remediate environmental harm or rehabilitate the site
- minimise financial benefits that a proponent may obtain by undertaking action prior to completing assessment and approval processes.

#### **Clause 196. Stop work notice where proponent contravenes call-in notice**

This clause clarifies the term of a stop work notice where it has been issued in conjunction with a call-in notice.

The clause identifies that the notice remains in force until the proponent or approval holder complies with the call-in notice, a decision on the requirement for impact assessment has been made, or an environmental approval is granted, whichever is the later.

This provides an additional incentive for a proponent or approval holder to comply with a call-in notice.

#### **Clause 197. Stop work notice may be issued even if other statutory authorisation issued**

This clause identifies that a stop work notice may be issued even if another statutory approval has been granted. This addresses those situations where, in good faith, a statutory decision-maker has issued an approval, but the NT EPA considers that the potential for significant impact from the action is such that further investigation, and possibly impact assessment and approval, is required.

### **Clause 198. Contravention of stop work notice – environmental offences**

This clause establishes four offences for failing to comply with a stop work notice. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where a person has been issued with a stop work notice, the person is reckless in their failure to comply with the notice, and the contravention results in significant environmental harm. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 1 penalty.

Subclause (2) establishes an offence where a person has been issued with a stop work notice, the person is reckless in their failure to comply with the notice, and the contravention results in material environmental harm. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (3) establishes an offence where a person has been issued with a stop work notice, the person fails to comply with the notice, and the contravention results in significant environmental harm. This is a strict liability offence, and the penalty is an environmental offence level 2 penalty.

Subclause (4) establishes an offence where a person has been issued with a stop work notice and fails to comply with the notice. This is a strict liability offence, and the penalty is an environmental offence level 3 penalty.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, to minimise environmental impacts and to minimise the financial benefit of proponents by taking unauthorised actions.

### **Division 4 Closure notices**

This division establishes a system of closure notices that can be issued by the Minister for those sites that may require ongoing monitoring or management after the expiration of an environmental approval. This could apply, for example, to landfills which are full and are seeking to be closed.

#### **Clause 199. Closure notice**

This clause establishes that the Minister may issue a closure notice. Notices may be issued before an environmental approval expires or after the expiration or revocation of an approval.

To issue a notice, the Minister must consider on reasonable grounds that ongoing monitoring or management is or will be required following site closure due to the nature of the activities that had occurred at the site.

The clause requires a notice be given to the underlying land owner or occupier if they did not receive a copy of the notice as the approval holder. This ensures that land owners and occupiers are aware of continuing environmental obligations at the site.

#### **Clause 200. Contents of closure notice**

This clause identifies the types of actions that the Minister may require the person issued with the closure notice to undertake. This includes: monitoring and management actions, reporting of outcomes, and the undertaking of environmental audits.

It also identifies the matters that must be included in a closure notice, such as the types of actions to be taken, the timeframe for taking actions, site details and the reasons for issuing the notice.

#### **Clause 201. Effect of closure notice**

This is a technical clause clarifying that each person issued with a notice is required to comply with the notice.

#### **Clause 202. Copy of closure notice may be lodged with Registrar-General**

This clause allows the Minister to lodge a copy of the closure notice with the Registrar-General and to have the notice held against land title. This provides certainty for the land owner and future land buyers about previous activities that have occurred on the land and any ongoing obligations associated with those previous activities.

#### **Clause 203. Recorded notice applies to owners and occupiers of land**

This clause clarifies that a closure notice that is recorded on the land title applies to the owners and occupiers of the land.

#### **Clause 204. Notice to owners and occupiers of land**

This clause requires the CEO to advise land owners and occupiers about any closure notices that may be recorded on the land title. The CEO is to give this advice as soon as practicable after the notice is recorded.

This ensures that land owners and occupiers are aware of the notice, and also of their obligations under the notice.

The clause also identifies that an owner or occupier may request the Northern Territory Civil and Administrative Tribunal (NTCAT) review the decision to record the notice against the land title.

#### **Clause 205. Notice by owner or occupier to CEO**

This clause requires an owner or occupier to advise the CEO if they sell or otherwise dispose of the land. This enables the CEO to take steps to ensure that the new owner or occupier is aware of the closure notice and their obligations in respect of the notice.

#### **Clause 206. Offence to contravene notice requirement**

This clause establishes an offence if the owner or occupier of land failing to give notice to the CEO about the sale or otherwise disposal of the land. It is a strict liability offence and attracts a penalty of 100 penalty units. This provides an additional incentive for the owner or occupier to comply with their notification obligations.

The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

### **Clause 207. Cancellation of recording of closure notice**

This clause enables the CEO to apply to the Registrar-General to cancel a recording of a closure notice, and obliges the Registrar-General to effect the cancellation if an application is received.

The clause also identifies the CEO must apply to cancel a recording when the notice has been revoked, or fully complied with, or in accordance with a direction from the NTCAT.

### **Clause 208. Contravention of closure notice – environmental offence**

This clause establishes an offence for failing to comply with a closure notice. This is a strict liability offence, and the penalty is an environmental offence level 3 penalty.

The clause contains standard defences for an offence of this nature, and requires the defendant to establish the defence.

### **Clause 209. Obstruct compliance with closure notice – environmental offence**

This clause establishes an offence for intentionally obstructing another person from complying with a closure notice. The penalty is an environmental offence level 4 penalty.

The clause contains standard defences for an offence of this nature, and requires the defendant to establish the defence.

### **Clause 210. Closure notice not complied with**

This clause allows the CEO to take the actions specified in a closure notice where the person issued with the notice has not complied with the notice. It also allows the CEO to take action to recover the costs associated with taking the action.

This ensures that any environmental impacts that may result from the person failure to comply with the notice are minimised, while ensuring that the cost of the action is not placed on Territorians.

## **Division 5 Closure certificates**

This division establishes a system of closure certificates that can be issued by the Minister to an approval holder once all development, remediation and rehabilitation activities at a site are complete. These certificates are a mechanism to acknowledge that the approval holder has completed all of their environmental obligations associated with the site and should no longer be liable for the site, even if there may be some residual risks associated with the former use of the site, including structures on the site. For example, these certificates could be issued to the operator of a fully closed, remediated and rehabilitated landfill site.

### **Clause 211. Criteria for closure certificate**

This clause enables the Minister to identify criteria that must be met before a closure certificate can be issued. The Minister may identify different closure criteria for different classes of action; for example, the criteria for a landfill would be significantly different to the criteria for a mine site. Empowering the Minister to specify criteria by Gazette notice provides flexibility and allows the Minister to be responsive to changing technologies and community expectations.

The establishment of specific criteria for a class of action does not prevent the Minister from imposing specific criteria at a particular site. This ensures that closure criteria are risk based and responsive to the specific needs of individual sites.

#### **Clause 212. Application for closure certificate**

This clause identifies those matters that must be included in an application for a closure certificate.

A closure certificate can only be issued where the approval holder intends to dispose of the land where the action occurred. The approval holder may sell or transfer the land to another person, or may be intending to give up a right to access the land, such as handing back a mineral title, or may use another mechanism to transfer the land to the Territory or a local government body.

#### **Clause 213. Issue of closure certificate**

This clause allows the Minister to issue a closure certificate. Before issuing a certificate, the Minister must be satisfied that all necessary remediation, rehabilitation and closure activities, which would likely include monitoring for a defined period, have been completed in accordance with the requirements of the approval, that the approval holder has complied with any closure requirements specified under clause 212. The Minister must also be satisfied that the approval holder intends to dispose of the land.

It is not intended that closure certificates would be issued immediately after activities at a site had been completed. Rather, they would be issued some period, nominally a number of years, after the site had been closed and in circumstances where regular and ongoing monitoring had identified no environmental impacts or issues of concern that can be attributed to the former use of the site. For example, a former landfill site may require a number of years of monitoring to demonstrate that there has been no deterioration of lining, that the capping and bunding of the landfill is operating as expected, and that there is no evidence of leachate runoff into ground or surface water.

#### **Clause 214. Effect of closure certificate**

This clause identifies that the effect of the closure certificate is to remove any liability from the approval holder for any future environmental impacts that may be associated with the former use of the land. It transfers this liability to the Territory.

For example, the issue of a closure certificate to the approval holder of a former landfill site would transfer any liability for environmental impacts associated with the landfill such as a lining failure that resulted in the release of leachates to groundwater from the approval holder to the Territory.

### **Division 6 Enforceable undertakings**

This Division establishes a process for the CEO entering into enforceable undertakings with a person who is alleged to have contravened the Act. The purpose of these undertakings is to facilitate better environmental outcomes than can be achieved simply by taking criminal or civil enforcement action.

#### **Clause 215. CEO may accept enforceable undertaking**

This clause identifies that the CEO may accept an enforceable undertaking from a proponent or approval holder to carry out remediation or rehabilitation works to rectify environmental harms, or to undertake other activities approved by the CEO. For example, if it would be

inappropriate to require a person to rehabilitate an area that has been cleared because it would require clearing in the future, the CEO may instead agree for the person to rehabilitate a different area of land.

The clause provides that undertakings must be in writing, and they can require the proponent or approval holder to publish the alleged contravention. An enforceable undertaking may be entered into before or after criminal or civil proceedings have been commenced.

#### **Clause 216. Enforcement orders**

This is a technical clause that enables the CEO to apply to the court to enforce the undertaking if the person is not complying with it.

The clause identifies that the court may make a range of orders associated with the undertaking, including payment of costs incurred by the CEO in taking action to minimise environmental harm resulting from the contravention and compensation to a person who has suffered loss or damage as a consequence of the contravention.

The court may also revoke the undertaking.

#### **Clause 217. CEO may do specified acts or things**

This clause allows the CEO to take any action that a person has been ordered to take under clause 216 if the person does not take the action.

The CEO may only take actions after giving written notice to the proponent or approval holder and providing them with an opportunity to rectify their failure to comply with the order.

The CEO would take these actions where the person failed to comply with the court order within a reasonable period of time and where it was necessary to limit environmental impacts. The clause also gives the CEO the power to recover the costs of taking the action through the court.

The CEO may also authorise another person to take an action on the CEO's behalf.

#### **Clause 218. Withdrawal or variation of enforceable undertaking by proponent or approval holder**

This clause clarifies that enforceable undertakings may be withdrawn or varied by a proponent or approval holder with the approval of the CEO.

#### **Clause 219. Withdrawal of acceptance by CEO of enforceable undertaking**

This clause identifies that the CEO may withdraw from an enforceable undertaking if the CEO considers the undertaking is no longer in the interests of the Territory. It identifies processes that the CEO must follow in withdrawing from the undertaking, which includes providing written notice to the proponent or approval holder and an opportunity for them to make representations in relation to the proposed withdrawal.

#### **Clause 220. No criminal proceedings while enforceable undertaking is in force**

This clause specifies that criminal proceedings cannot be commenced against a proponent or approval holder while an enforceable undertaking is in place. This provides an incentive for a person to enter into an undertaking and to comply with its requirements.

### **Clause 221. Proceedings following revocation of enforceable undertaking**

This clause clarifies that criminal proceedings may be commenced if an enforceable undertaking is withdrawn before the CEO is satisfied that the requirements of the undertaking have been complied with.

### **Clause 222. No further proceedings if enforceable undertaking complied with**

This clause identifies that criminal proceedings may not be commenced for an alleged breach of the Act that was the subject of an enforceable undertaking if all the requirements of that undertaking have been complied with.

## **Division 7 Emergency authorisations**

### **Clause 223. Emergency authorisations**

This clause enables the CEO to authorise a person to take actions during an emergency where those actions might otherwise breach the Act. Before issuing an authorisation, the CEO needs to be satisfied that urgent circumstances exist and that the action is justified by the need to protect the environment or critical public infrastructure or otherwise in the circumstances.

The clause is designed to be responsive to truly emergency events, and not to provide for situations that arise because an approval holder has not appropriately managed their site. For example, an authorisation may be given to a dam operator to release water if there has been excessive rainfall and the operator needs to release the water in a staged way to prevent uncontrolled releases, thereby minimising the potential impacts on nearby roads and bridges. In contrast, a request by a mining operator to release contaminated water to protect buildings on the mining site where the build up of water has resulted from a failure to appropriately manage water storage capacity is unlikely to be authorised.

## **Division 8 Duty to notify incidents**

This Division establishes requirements for a person to notify the CEO of certain incidents that may occur in relation to an action which is regulated by an environmental approval or for an action which is undergoing environmental impact assessment.

The purpose of the Division is to ensure that appropriate incidents are reported in a timely way in order that appropriate actions can be taken to minimise subsequent environmental impacts.

### **Clause 224. Application of Division**

This clause identifies when the Division applies. It applies when an incident, which may cause material or serious environmental harm, occurs at a site which is the subject of an environmental approval or which is undergoing environmental impact assessment.

### **Clause 225. Duty to notify CEO of incidents**

This clause identifies who is required to notify the CEO of an incident referred to in clause 224.

It includes: the approval holder, a person who is undertaking an environmental audit, and owners and occupiers.

### **Clause 226. Manner and form of notice**

This clause identifies that the reporting of an incident must comply with the regulations. The regulations will specify the minimum information requirements to be included in a notice given under this section.

### **Clause 227. Incidents not required to be reported**

This clause clarifies that a person referred to in clause 225 is not required to report an incident if they are aware the incident has already come to the CEO's attention.

In effect it creates a hierarchy of reporting by recognising that some persons, such as the approval holder, have a higher moral obligation to report than other persons, such as a land owner, who is not involved in the operation of the action that resulted in the incident that requires reporting.

The clause also acknowledges that some material or serious environmental harms may result from ordinary, or day to day operations, depending on the nature of the action that is being undertaken. These types of incidents do not need to be reported if they are authorised by an environmental approval.

### **Clause 228. Failure to notify incident – environmental offences**

This clause establishes four offences for failing to report an incident as required under clause 225. It provides a standard approach to creating tiered offences that reflect differing levels of environmental risk or consequence as a result of the alleged breach and differing levels of culpability of an alleged offender.

Subclause (1) establishes an offence where an incident results in significant environmental harm and the person is reckless in their failure to report the incident. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 2 penalty.

Subclause (2) establishes an offence where an incident results in material environmental harm and the person is reckless in their failure to report the incident. This offence contains strict liability elements, and the penalty for this offence is an environmental offence level 3 penalty.

Subclause (3) establishes an offence where an incident results in significant environmental harm and the person fails to report the incident. This offence is an offence of strict liability, and the penalty for this offence is an environmental offence level 3 penalty.

Subclause (4) establishes an offence where an incident results in material environmental harm and the person fails to report the incident. This offence is an offence of strict liability, and the penalty for this offence is an environmental offence level 4 penalty.

Each offence applies to each person that has the duty to provide a notification in accordance with clause 225. The clause contains standard defences for offences of this nature, and requires the defendant to establish the defence.

These offences are designed to promote good environmental outcomes, and to minimise environmental impacts, by ensuring that incidents are reported in a timely way.

### **Clause 229. Incriminating information**

This clause identifies that a person is required to make a notification under this Division even if the notification may incriminate the person. It is an abrogation of the right against self-

incrimination which is necessary in order to minimise environmental impact or harm that can result from unauthorised incidents occurring.

The clause provides a protection for the person who is required to provide the notification by identifying that any information that is provided as part of a notification in accordance with the minimum requirements specified in the regulations cannot be used as evidence against the person for an offence or civil penalty.

This does not prevent the use of material that may be identified as a consequence of the information provided as part of the notification from being used as evidence in criminal or civil proceedings.

The clause does not apply to any proceedings relating to false or misleading information or documents as the information supplied as part of the notification may form the basis of those proceedings. It also does not prevent the bringing of proceedings against a person for failing to comply with their obligation to report an incident.

## **PART 10 CIVIL PROCEEDINGS**

### **Division 1 Injunctions and other orders**

#### **Clause 230. Who may bring proceeding**

This clause clarifies who may apply for an injunction or other civil proceedings order. It has been included for certainty and identifies that a person who is affected by the alleged act or omission that may comprise a breach of the Act may bring proceedings.

#### **Clause 231. Prohibitory injunctions**

This is a technical clause that states that a court may grant an injunction restraining a person from undertaking certain activities that would be in breach of the Act. The court may also require the person to undertake certain activities.

#### **Clause 232. Mandatory injunctions**

This is a technical clause that states that a court may grant an injunction requiring a person to undertake certain activities, if the failure to do those activities would constitute a breach of the Act.

#### **Clause 233. Interim injunctions**

This is a technical clause that states that the court may grant interim injunctions prior to granting a prohibitory or mandatory injunction. Interim injunctions may require a person to undertake an activity, or preventing them from undertaking an activity.

#### **Clause 234. Certain considerations for granting injunctions not relevant**

This is a technical clause that provides that in deciding whether or not to grant an injunction, the court is not required to consider a person's previous conduct and history, or the imminence of any potential environmental harm. This is included to clarify that these types of matters are not necessary for the court to issue an injunction if the court considers the circumstances are appropriate.

### **Clause 235. Discharge of injunctions**

This is a technical clause identifying that the court may discharge any injunction that has been granted.

### **Clause 236. Other orders**

This is a technical clause that allows the court to make a range of orders to address harms or impacts caused by a person breaching the Act. These include orders to remediate or rehabilitate the environment, repay costs incurred by the Minister or CEO in preventing or mitigating environmental harm, and compensatory costs for a person who has suffered loss or damage to property.

### **Clause 237. Court may vary or revoke order**

This is a technical clause identifying that the court may revoke any order that it has previously made under clause 236.

### **Clause 238. Security and undertakings**

This is a technical clause that states that the court may require a person seeking an injunction or other order to pay a security for costs and to give undertakings as to damages.

It also states that the court may determine not to require a security or other undertaking for injunctions and orders that are sought in the public interest. Public interest is not defined and would be determined by the court on the basis of the particular circumstances and with regard to previous case law.

### **Clause 239. Orders as to costs**

This is a technical clause that states that the court may make any cost orders that it considers reasonable and appropriate.

It also states that the court may determine not to make a costs order for proceedings that are taken in the public interest. Public interest is not defined and would be determined by the court on the basis of the particular circumstances and with regard to previous case law.

### **Clause 240. Orders as to damages on application of respondent**

This is a technical clause that states that the court may require a person to pay compensation to a respondent (the person who is alleged to have breached the Act) if the court determines that the respondent did not breach the Act, has suffered loss or damage as a result of the civil proceedings, and in the circumstances compensation is warranted. Compensation is in addition to any costs orders that may be made in favour of the respondent.

### **Clause 241. Time for commencing proceedings under this Division**

This clause provides that a person may commence proceedings within 90 business days after the date of the alleged contravention of the Act.

The clause allows the court to extend the 90 day period where it considers that an extension is appropriate. It provides certain matters that should be considered by the court in making this decision.

## **Clause 242. Powers conferred are in addition to other powers of court**

This is a technical clause that confirms that the powers given to the court under this Division are in addition to, and do not limit, the powers that the court has under any other legislation or the common law that may enable a person to bring civil proceedings.

## **Division 2 Civil penalty orders, other civil orders and directions**

### **Clause 243. Purpose of Division**

This Division establishes a civil penalty regime. It enables the CEO to seek civil penalties and orders as an alternative to criminal proceedings.

### **Clause 244. CEO may give certain directions**

This clause allows the CEO to make certain directions to a person that the CEO is satisfied has committed a strict liability offence as an alternative to taking criminal proceedings. The CEO may direct the person to remediate environmental harm, or rehabilitate the environment and to publicise the offence and the resulting environmental impact.

These types of orders are designed to facilitate better environmental outcomes than can be achieved simply by prosecuting offenders.

### **Clause 245. Application for civil orders**

This clause establishes that the CEO may apply to the court for particular civil orders, including civil penalty orders and orders under clause 248.

The clause uses the term “court of competent jurisdiction” which allows the CEO to apply to either the Local Court or the Supreme Court depending on the amount of penalty that is sought by the CEO. If the penalty falls within the civil jurisdiction of the Local Court (currently between \$25 000 and \$250 000) then the CEO can apply to the Local Court, reducing costs for both the CEO and the alleged offender. If the penalty sought by the CEO is higher than the Local Court’s jurisdiction, then the CEO may apply to the Supreme Court.

The CEO may only bring civil proceedings for an alleged offence of strict liability. These are generally lower tier offences, with penalties of environmental offence level 3 or 4. Offences that contain strict liability elements,

### **Clause 246. CEO to have regard to certain matters**

This clause establishes the matters that the CEO must have regard to when deciding whether to seek commence civil proceedings or give a direction under this Division. This includes the seriousness of the alleged contravention and the alleged offender’s history of compliance with the Act.

### **Clause 247. Notice of proposed application to court**

This clause establishes processes associated with the CEO seeking orders under the Division. It identifies that the CEO must give a notice to the alleged offender about the CEO’s intention to apply for a civil order, including the amount of any proposed penalty. The CEO must give at least 21 business days’ notice of their intention to seek the order.

As an alternative to the CEO taking civil proceedings, the alleged offender may elect to be prosecuted for the alleged offence.

### **Clause 248. Civil orders**

This is a technical clause that identifies the types of civil orders that the court may make. These include civil penalty orders, and orders under clause 250. The court may also make any other order that it considers appropriate.

The clause further provides that the amount of a civil penalty order cannot exceed the maximum amount that is payable as a criminal penalty for the offence. \

### **Clause 249. Court to have regard to certain matters**

This is a technical clause that identifies the matters the court must consider when setting a civil penalty. It includes the nature and extent of the contravention, the environmental harm that resulted from the contravention, the person's previous environmental history, and the amount of any financial benefit or saving that was (or could be) obtained by committing the contravention.

### **Clause 250. Civil orders under section 248(1)(b)**

This is a technical clause that allows the court to make a range of orders to address harms or impacts caused by a person breaching the Act. These include orders to ensure the contravention does not happen again, to remediate or rehabilitate the environment, repay costs incurred by the Minister or CEO in preventing or mitigating environmental harm, and compensatory costs for a person who has suffered loss or damage to property. The court may also require the person to publicise the offence and the resulting environmental impact.

### **Clause 251. CEO may take measures if order not complied with**

This clause allows the CEO to take any action that a person has been ordered to take under clause 250 if the person does not take the action. The CEO would take these actions where the person failed to comply with the court order within a reasonable period of time and where it was necessary to limit environmental impacts. The clause also gives the CEO the power to recover the costs of taking the action through the court or by registration on land title.

The CEO may also authorise another person to take an action on the CEO's behalf.

### **Clause 252. Jurisdiction is civil jurisdiction**

This is a technical clause that clarifies that the court, when making orders under this Division, is using its civil jurisdiction.

### **Clause 253. Contravention of 2 or more provisions**

This is a technical clause that clarifies that a person may be required to pay civil penalties for alleged breaches of multiple sections of the Act, but cannot be required to pay more than one civil penalty in relation to the same type of conduct.

### **Clause 254. Proceeding to be stayed if criminal proceedings commenced**

This is a technical clause that provides that any civil proceedings taken under the Division are stayed if criminal proceedings are commenced for substantially the same conduct. Civil proceedings may only be resumed if the criminal proceedings do not result in a finding of guilt against the person.

### **Clause 255. Evidence not admissible in criminal proceedings**

This clause specifies that evidence that was provided for the purpose of civil proceedings cannot be used as evidence in criminal proceedings for a substantially similar offence. It

does not prevent the use of material that may be identified as a consequence of the material provided for the civil proceedings.

The clause does not apply to any proceedings relating to false or misleading information or documents as the supplied material may form the basis of those proceedings.

**Clause 256. Orders as to costs**

This is a technical clause that states that the court may make any cost orders that it considers reasonable and appropriate. This includes costs incurred by the CEO in investigating the alleged offence.

**Clause 257. Recovery of amounts ordered to be paid to Territory**

This is a technical clause that states that any amount to be paid to the Territory as part of an order under this Division (including a civil penalty order, costs order, or order in compensation or reimbursement etc.) can be recovered by the Territory as a judgement debt.

**Clause 258. Time for bringing proceedings under this Division**

This is a technical clause that provides that a person may commence proceedings within 3 years after the date of the alleged contravention of the Act.

This period aligns with the period for bringing criminal proceedings for alleged offences against the Act.

**Clause 259. Civil proceedings not to affect environment protection notices**

This is a technical clause to clarify that the bringing of civil proceedings does not have any effect on an environment protection notice that may have been issued in relation to the alleged contravention, either before, during or after the civil proceedings commenced. This ensures that environmental impacts are appropriately managed during any civil proceedings.

**PART 11 OFFENCES, PENALTIES AND CRIMINAL PROCEEDINGS**

**Division 1 Offences**

**Clause 260. Offence to provide false or misleading information**

This clause contains two offence associated with providing false or misleading information.

Subclause (1) identifies that it is an offence to provide false or misleading information while subclause (2) identifies that it is an offence to provide a document that contains false or misleading information. Offences are not committed if in giving the information or document, that person points out any misleading aspect and, as far as reasonably possible, assists in remedying the misleading aspect or aspects

These offences are standard offences of this nature and both offences contain penalties of 200 penalty units or 2 years imprisonment (for an individual). The offences also contain standard defences for offences of this nature.

These offences are designed to promote good environmental decision-making by ensuring the accuracy of the information on which decisions are based.

**Clause 261. Contravention of court order under section 216 or 236 – environmental offence**

This clause provides for two offences associated with failing to comply with court orders.

The offences are strict liability offences and the defendant has the onus of proof to establish a defence to a prosecution of the offence.

These offences are necessary to ensure the effectiveness of the compliance and enforcement provisions of the Act. They ensure that defendants cannot fail to comply with a court order without penalty.

**Clause 262. Continuing offences**

This clause establishes 'continuing offences'. Continuing offences are offences that are considered to be ongoing until the defendant takes the necessary action to take, or stop taking, certain activities that constitute the offence.

This clause allows the Court to impose additional penalties for each day that the offence continued after the person was charged, and for each day it continued after the offender was first found guilty.

These are standard clauses in environmental legislation that recognise the potential environmental impacts that can, and continue to occur, if a person fails to take the required action.

**Clause 263. Liability of occupier**

This clause establishes that occupiers of land must take reasonable steps and exercise due diligence to prevent offences occurring on their land.

It establishes that an occupier that has not taken reasonable steps or exercised due diligence can be taken to be guilty of an environmental offence.

The defendant has the onus of proof to establish a defence to a prosecution of the offence.

**Clause 264. Liability of owner**

This clause identifies when the owner of land is not considered to be the occupier of land for the purposes of the offence in clause 263. The defendant has the onus of proof to establish that they were not the occupier of the land.

**Clause 265. Criminal liability of executive officer of body corporate**

This clause identifies when the executive officer of a body corporate that is considered to have committed an offence under the Act may also be considered to have committed that offence. An executive officer is a director or other person that is concerned with or takes part in the management of the body corporate.

The clause specifies the matters that should be considered by the Court in determining whether or not to impose liability on the executive officer. These include the actions of the executive officer to ensure that an offence did not occur and the actions taken once the executive officer became aware of the commissioning of the offence.

The clause also identifies that a body corporate does not have to be charged with an offence for the provision to apply, and identifies that any defence available to the body corporate is also available to the executive officer. Proceedings under this clause do not affect proceedings against the body corporate.

The maximum penalty that may be imposed is the maximum penalty that could be imposed for an offence of that nature on an individual.

The clause is included as a deterrent to executive officers failing to comply with their duties to prevent and minimise environmental harms or impacts.

#### **Clause 266. Liability of partners and unincorporated associations**

This clause identifies when a partner in a partnership arrangement, or the officers of an unincorporated association, that is considered to have committed an offence under the Act may also be considered to have committed that offence.

The clause specifies defences to these charges. These include that the partner or officer did not authorise, permit or consent to the offence; the extent to which the partner or officer could have known the offence was likely to occur and the steps they took to prevent the occurrence of the offence; and the extent to which the partner or officer could have prevented the commission of the offence.

The clause also identifies that the other partner or other officer do not have to be charged with an offence for the provision to apply, and identifies that any defence available to the other partner or other officer is also available to the partner or officer that is charged under this provision

The maximum penalty that may be imposed is the maximum penalty that could be imposed for an offence of that nature on an individual, however a period of imprisonment cannot be imposed.

The clause is included as a deterrent to partners and officers of unincorporated associations from failing to comply with their duties to prevent and minimise environmental harms or impacts from activities that they are involved in.

#### **Clause 267. Liability for employees and agents**

This clause identifies when employees and agents may be considered to have committed an offence.

The clause specifies defences to these charges. These include that the employee or agent did not authorise, permit or consent to the offence; the extent to which the employee or agent could have known the offence was likely to occur and the steps they took to prevent the occurrence of the offence; and the extent to which the employee or agent could have prevented the commission of the offence.

The clause also identifies that the employer does not have to be charged with an offence for the provision to apply, and identifies that any defence available to the employer is also available to the employee or agent that is charged under this provision

The maximum penalty that may be imposed is the maximum penalty that could be imposed for an offence of that nature on an individual, however a period of imprisonment cannot be imposed.

The clause is included as a deterrent to employees and agents from failing to comply with their duties to prevent and minimise environmental harms or impacts from activities that they are involved in.

### **Clause 268. Court may order reimbursement of investigation costs**

This clause identifies that the court may, in addition to any other order it may make under the Act or under the Sentencing Act 1995, make orders requiring a person found guilty of an offence under the Act to pay the investigation costs and expenses incurred by the CEO.

### **Clause 269. Alternative verdicts**

This clause identifies that the Court may find a person guilty of different offence to the offence that was charged. The alternative offences that are available are those which have a lower penalty and have resulted in less severe environmental harm. This is a standard approach in legislation that contains tiered offences such as those contained in this Act.

## **Division 2 Specified environmental offences**

### **Clause 270. Principles to be applied in imposing a penalty for specified environmental offences**

This clause specifies the matters the court should consider when imposing a penalty for specified environmental offences. Specified environmental offences are identified in clause 4 and are generally those offences where there is, or is likely to be, an environmental harm resulting from the offence.

The matters to be considered include:

- the benefit or likely benefit obtained from committing the offence and the desirability of fixing a penalty that outweighs that benefit
- the extent and nature of the environmental harm caused by the offence
- the need to deter cumulative impacts of conduct of the nature of the offender
- the offender's efforts to minimise or remediate environmental harm
- the offender's efforts to comply with the environmental approval
- the offender's compliance history
- whether the offender deliberately concealed the conduct or the illegal nature of the conduct.

### **Clause 271. Additional court orders where specified environmental offence proved**

This clause identifies a range of court orders that the court may impose on a person found guilty of a specified environmental offence.

These include orders to:

- take action to prevent the offence from reoccurring and remediate harm caused by the offence
- undertake activities to enhance the environment in an area for public benefit. This type of order is likely to be sought where it would be inappropriate to seek to have the area remediated or rehabilitated; e.g. an area which has been cleared but for which clearing would have been authorised had the offender sought the appropriate approval

- compensate the CEO for costs associated with taking remedial and preventative action to address environmental harm
- pay to the CEO an amount that is estimated to not exceed the amount of benefit, financial, monetary or economic, the person received from failing to comply with their obligations
- pay compensation costs
- publicise the offence and its environmental consequences.

**Clause 272. CEO may take measures if order not complied with**

This clause allows the CEO to take any action that a person who has been found guilty of an offence has been ordered to take by the court. The CEO would take these actions where the person failed to comply with the court order. The clause also gives the CEO the power to recover the costs of taking the action through the court or by registration on land title.

The CEO may also authorise another person to take an action on the CEO's behalf.

**Division 3 Criminal proceedings**

**Clause 273. Who can commence proceedings**

This clause specifies that the CEO, an environmental officer, or another person authorised by the CEO can bring commence proceedings for an alleged offence against the Act.

It further identifies that the CEO or NT EPA (as relevant) must give their consent before an environmental officer, other than a police officer, brings proceedings under the Act. This is to ensure that the person with authority for the relevant provisions of the Act (either the CEO or NT EPA) has considered the alleged offence and approved the enforcement action.

**Clause 274. Time for commencing prosecution**

This clause provides that proceedings for an offence against the Act can be brought three years from the date the offence was committed, or the date the offence came to the attention of the CEO or NT EPA (as relevant), whichever is the later.

**Clause 275. Enforcement agency for Fines and Penalties (Recovery) Act 2001**

This clause identifies the CEO and the NT EPA as enforcement agencies for the purposes of the *Fines and Penalties (Recovery) Act 2001*. This will enable those bodies to use the powers under the Act in the enforcement of infringement notices issued under the Act.

**PART 12 REVIEW OF DECISIONS**

**Clause 276. Standing for judicial review**

This clause identifies that decisions made by the Minister, NT EPA and CEO are subject to judicial review.

It alters the common law position on standing for judicial review by limiting standing to defined persons being:

- A proponent of an action to which the decision relates.

- An applicant for the decision, for example, an applicant for a transfer of an environmental approval.
- A person directly affected by the decision, such as Traditional Owners of land where an action is occurring or a neighbouring land owner.
- A person who made a genuine and valid submission during the assessment and approval process. This clause explicitly excludes persons who submit form letters or sign petitions. While form letters and petitions provide good information about community interest and sentiment about a particular issue, participation at this level is not considered to be sufficient to create right of review.

A person who makes a submission after the closing period specified by the decision-maker for receiving submissions are also excluded from seeking a review, unless the Court determines otherwise. This gives the court the necessary flexibility to consider why the submission was made after the period and the potential detriment if the person was not provided with the opportunity to seek the review.

#### **Clause 277. Review by NTCAT**

This clause provides that certain decisions made by the CEO can be reviewed by the Northern Territory Civil and Administrative Tribunal (NTCAT). The Schedule identifies the reviewable decisions and who may seek the review. In general terms, reviews are limited to the person who is directly affected by the decision.

### **PART 13 GENERAL MATTERS**

#### **Division 1 Delegation**

##### **Clause 278. Delegation by Minister**

Clause (1) allows the Minister to delegate any of their powers and functions to the CEO or another person. This will enable administrative efficiencies and streamline decision-making.

Clause (2) allows a delegation of the Minister's powers to vary environmental approvals and their conditions to the NT EPA or a member of the NT EPA. This limited delegation will facilitate administrative efficiencies in the consideration of requests to amend environmental approvals where these amendments will not result in any additional or different environmental risks.

##### **Clause 279. Delegation by CEO**

This clause allows the CEO to delegate any of their powers and functions to another person. This will enable administrative efficiencies and streamline decision-making.

#### **Division 2 Service**

##### **Clause 280. Service**

This clause identifies that any document that needs to be given to another person under the Act, such as an environment protection notice, can be given electronically by email.

This clause provides certainty and is required because the *Electronic Transactions (Northern Territory) Act 2000* only allows electronic service where the person receiving the electronic notice consents to receiving it electronically.

The inclusion of the clause will provide administrative efficiencies under the Act and reflects a modern approach to correspondence.

### **Division 3 Confidentiality of information**

#### **Clause 281. Confidential information**

This clause recognises that some information that is required to inform environmental decision-making may be confidential.

It allows the person submitting the information to request that the confidential information is not released to the public. As part of the request, the person will be required to identify why the information should be confidential and not released consistent with the generally transparent approach to decision-making under the Act.

#### **Clause 282. Decision of Minister or NT EPA**

This clause provides the power for the Minister or NT EPA to withhold confidential information in accordance with the applicant's request.

It places a limitation on when the Minister and NT EPA can withhold commercially confidential information to limit broad claims that material is commercially confidential.

#### **Clause 283. Effect of decision**

This clause provides that if the Minister or NT EPA decide that confidential information can be withheld from publication, the information is still required to be provided – so that decision-making is informed to the greatest extent possible – and allows the information to be provided to other relevant decision-makers.

It also places a prohibition on the publication of information if the Minister or NT EPA have determined that it is confidential.

### **Division 4 Public register**

#### **Clause 284. Public register**

This clause establishes that the CEO must maintain a public register of certain documents and decisions made under the Act. This provision is included for transparency and to improve confidence in the environmental management system.

### **Division 5 Directions to provide information**

This Division provides an improved mechanism for the Minister to collect and manage information about the Territory's environment, in order to improve environmental decision-making.

#### **Clause 285. Direction notice**

Under this clause, the Minister may, by Gazette notice, direct proponents and approval holders to provide certain information, including data.

The clause specifies the circumstances in which a direction notice can be issued and the matters that must be included in the notice.

It also provides that different directions can be made in relation to different classes of proponents or approval holders, types of actions or parts of the Territory. This provides flexibility in the application of these provisions.

**Clause 286. Methodologies**

This clause specifies that the Minister, NT EPA or CEO can determine the methodologies for information to be provided in accordance with the direction notice. This will improve consistency in the collection and aggregation of data which in turn will improve the nature of the data on which environmental decisions are based.

**Clause 287. Proponent or approval holder to provide information**

This clause provides an offence for a proponent or approval holder to fail to comply with a direction notice.

**Clause 288. Proponent or approval holder may seek exemption**

This clause identifies that a proponent or approval holder may seek an exemption from the requirement to comply with the direction notice. It acknowledges that some information or data may be sensitive or confidential, or that there may be other practical reasons that the notice cannot be complied with.

**Clause 289. Publication of information**

This clause provides a power for the Minister or CEO to publish information that is provided by a proponent or approval holder under the Division. This is intended to avoid conflicts between the person providing the information and the Minister about whether the Government has the right to publish the information.

**Division 6 Report by CEO**

**Clause 290. CEO to report on enforcement and compliance**

This clause requires the CEO to provide a report, at least annually, on the enforcement and compliance measures taken under the Act. This provision is included for transparency and to improve confidence in the environmental management system.

**Division 7 Guidance and procedural documents**

**Clause 291. Guidance documents**

This is a clarification clause that provides certainty that the Minister, NT EPA and CEO have powers to publish guidance material for the purposes of the Act.

**Clause 292. Approved forms**

This clause allows the CEO to prepare and approve forms that may be required for the efficient operation of the Act.

## **Division 8 Regulations**

### **Clause 293. Regulations**

This is a standard clause that identifies that the Administrator may make Regulations for the purposes of the Act. It provides a number of examples of the types of matters that may be the subject of Regulations.

## **PART 14 REPEALS AND TRANSITIONAL MATTERS**

### **Division 1 Acts repealed**

#### **Clause 294. Acts repealed**

This clause identifies that the *Environmental Assessment Act 1982* and the *Environmental Assessment Amendment Act 1994* are formally repealed by this new Act.

### **Division 2 Transitional matters**

This Division provides for a number of transitional matters that are required as a consequence of repealing the *Environmental Assessment Act 1982* and the commencement of this Act.

#### **Clause 295. Definitions**

This clause provides a number of definitions to assist in the interpretation of the transitional provisions.

In particular, it identifies that for the purposes of the Division, a prescribed Act is the:

- *Mining Management Act 2001*, or
- *Planning Act 1999*, or
- *Petroleum Act 1984*, or
- *Waste Management and Pollution Control Act 1998*.

#### **Clause 296. Saving of existing assessments commenced but not completed**

This clause identifies that any assessment process commenced under the *Environmental Assessment Act 1982* but not completed at the commencement of this Act continues to be subject to the *Environmental Assessment Administrative Procedures 1984* (Administrative Procedures) as if this Act had not commenced.

It then provides for a number of changes to the Administrative Procedures to increase transparency in the impact assessment process and to provide better alignment with the proposed processes for environmental impact assessment that will be established through Regulations under this Act.

#### **Clause 297. Termination of assessment under former Act**

This clause provides a mechanism for the NT EPA to terminate assessment processes that were commenced under the *Environmental Assessment Act 1982* in certain circumstances. The clause will generally apply where a proponent has not taken action in relation to the

impact assessment process, such as preparing assessment documentation for a number of years. The clause requires the NT EPA to provide a proponent notice of its intention to terminate the assessment process and to advise any Responsible Minister within the meaning of the *Environmental Assessment Act 1982*.

#### **Clause 298. Environmental audit**

This clause clarifies that the new provisions of Part 8, Divisions 1 and 2 and Part 9 Divisions 1 and 3 of this Act can be applied to any actions that were assessed under the *Environmental Assessment Act 1982*.

This allows the NT EPA and CEO to learn from the outcomes of previous assessment processes, and to take action where previously assessed actions are having unacceptable impacts on the environment.

#### **Clause 299. Assessment report**

This clause identifies that any assessment report prepared under the *Environmental Assessment Act 1982* continues to apply for the purposes of this Act. This is necessary as some proponents may wish to submit a significant variation to an action that has previously been assessed and it will enable the NT EPA to have regard to that previous assessment.

#### **Clause 300. Assessment report completed under former Act before commencement**

This clause specifies what happens in circumstances where an assessment report was completed under the *Environmental Assessment Act 1982* but an approval to conduct the action has not been granted.

If an approval is required under a prescribed Act, then an environmental approval is not required to be granted under this Act.

If an approval is not required under a prescribed Act, then an environmental approval granted under this Act will be required.

This ensures that those actions that have the potential to have significant impacts on the environment will receive a form of approval to manage those environmental impacts.

#### **Clause 301. Assessment report completed under former Act after commencement**

This clause specifies that if an assessment report is completed under the *Environmental Assessment Act 1982* after the commencement of this Act, then an environmental approval granted under this Act is required.

This ensures that those actions that have the potential to have significant impacts on the environment will receive an environmental approval to manage those environmental impacts.

#### **Clause 302. Process for environmental approval**

This clause establishes how an environmental approval is to be developed, if it is required under clause 300 or clause 301.

#### **Clause 303. Transitional regulations**

This is a standard clause where a new Act is replacing an existing Act. It identifies that regulations may provide for matters of a transitional nature. It enables the development of regulations in circumstances where difficulties or gaps are identified with the transitional provisions.

## **PART 15 CONSEQUENTIAL AMENDMENTS**

This Part identifies a number of consequential amendments to other legislation that are required as a result of repealing the *Environmental Assessment Act 1982*.

### **Division 1 Geothermal Energy Act 2009**

#### **Clause 304. Act amended**

This clause identifies that the *Geothermal Energy Act 2009* is amended.

#### **Clause 305. Section 68 amended (Approval of geothermal operations plan)**

This clause omits an existing reference to an environmental assessment under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the approval of a geothermal operations plan until processes under this Act have been considered and completed.

### **Division 2 Meat Industries Act 1996**

#### **Clause 306. Act amended**

This clause identifies that the *Meat Industries Act 1996* is amended.

#### **Clause 307. Section 15 amended (Applications relating to establishment in area not subject to development provisions or interim development control order)**

This clause omits an existing reference to the *Environmental Assessment Act 1982* and replaces it with a reference to this Act.

### **Division 3 Mining Management Act 2001**

#### **Clause 308. Act amended**

This clause identifies that the *Mining Management Act 2001* is amended.

#### **Clause 309. Section 36 amended (Approval of mining management plan and grant of Authorisation)**

This clause inserts a new requirement that places a prohibition on the approval of a mining management plan and grant of an authorisation until processes under this Act have been considered and completed.

#### **Clause 310. Section 37 amended (Duration and conditions of Authorisation)**

This clause omits existing references to the *Environmental Assessment Act 1982*.

#### **Clause 311. Section 82 amended (Protection of environment)**

This clause omits an existing reference to an environmental assessment under the *Environmental Assessment Act 1982* and replaces it with a reference to this Act.

#### **Clause 312. New Part 13 inserted**

This clause inserts a new Part 13 into the *Mining Management Act 2001*. This new Part is associated with clause 298 which provides that an environmental approval is not required to be granted if an assessment report is completed under the *Environmental Assessment Act 1982* before the commencement of this Act. The new part operates to ensure that an authorisation can be granted, and a mining management plan approved, under the *Mining Management Act 2001*, notwithstanding the amendments to section 36 of that Act under these transitional arrangements.

#### **Division 4 Northern Territory Environment Protection Authority Act 2012**

##### **Clause 313. Act amended**

This clause identifies that the *Northern Territory Environment Protection Authority Act 2012* is amended.

##### **Clause 314. Section 3 amended (Definitions)**

This clause omits a definition of principles of ecologically sustainable development and the articulation of those principles from the *Northern Territory Environment Protection Authority Act 2012* and replaces them with references to the definition and principles contained in this Act. This will ensure consistency between these pieces of legislation.

##### **Clause 315. Section 25AA amended (Regard to principles of ecologically sustainable development)**

This clause removes section 25AA(2). These principles are now contained in this Act.

#### **Division 5 Petroleum Act 1984**

##### **Clause 316. Act amended**

This clause identifies that the *Petroleum Act 1984* is amended.

##### **Clause 317. Section 15A amended (Appropriate person to hold permit or licence)**

This clause omits an existing reference to the *Environmental Assessment Act 1982* and replaces it with a reference to this Act.

#### **Division 6 Planning Act 1999**

##### **Clause 318. Act amended**

This clause identifies that the *Planning Act 1999* is amended.

##### **Clause 319. Section 30C amended (Making concurrent application)**

This clause omits references to environmental impact assessment processes under the *Environmental Assessment Act 1982*. It replaces these references with comparable obligations under this Act.

**Clause 320. Section 30P amended (Preliminary decision about development proposal)**

This clause omits an existing reference to environmental assessment processes under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the making of a preliminary decision regarding a development proposal until processes under this Act have been considered and completed.

**Clause 321. Section 30S amended (Matters to be taken into account for amendment decision)**

This clause omits an existing reference to environmental assessment processes under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the making of a decision regarding an amendment proposal until processes under this Act have been considered and completed.

**Clause 322. Section 42 amended (Matters to be taken into account when making decision)**

This clause omits an existing reference to environmental assessment processes under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the making of a decision regarding a proposal until processes under this Act have been considered and completed.

**Clause 323. Section 46 amended (Development applications)**

This clause omits references to environmental impact assessment processes under the *Environmental Assessment Act 1982*. It replaces these references with comparable obligations under this Act.

**Clause 324. Section 51 amended (Matters to be taken into account)**

This clause omits an existing reference to environmental assessment processes under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the making of a decision regarding a development proposal until processes under this Act have been considered and completed.

**Clause 325. Section 112 amended (Review if consent authority does not determine application)**

This clause omits an existing reference to environmental assessment processes under the *Environmental Assessment Act 1982*.

**Clause 326. Part 12, Division 6 inserted**

This clause inserts a new Part 12, Division 6 into the *Planning Act 1999*. This new Part is associated with clause 300 which provides that an environmental approval is not required to be granted if an assessment report is completed under the *Environmental Assessment Act 1982* before the commencement of this Act. The new part operates to ensure that relevant development approvals can be granted under the *Planning Act 1999*, notwithstanding the amendments to that Act under these transitional arrangements.

## **Division 7 Waste Management and Pollution Control Act 1998**

### **Clause 327. Act amended**

This clause identifies that the *Waste Management and Pollution Control Act 1998* is amended.

### **Clause 328. Section 32 amended (Matters to be considered in granting approvals and licences)**

This clause omits an existing reference to environmental impact assessment processes under the *Environmental Assessment Act 1982*. It replaces the reference with a prohibition on the grant of approvals and licences until processes under this Act have been considered and completed.

### **Clause 329. New Part 16 inserted**

This clause inserts a new Part 16 into the *Waste Management and Pollution Control Act 1998*. This new Part is associated with clause 300 which provides that an environmental approval is not required to be granted if an assessment report is completed under the *Environmental Assessment Act 1982* before the commencement of this Act. The new part operates to ensure that approvals and licences can be granted under the *Waste Management and Pollution Control Act 1998*, notwithstanding the amendments to section 32 of that Act under these transitional arrangements.

## **Division 8 Environmental Offences and Penalties Regulations 2011**

### **Clause 330. Regulations amended**

This clause identifies that the *Environmental Offences and Penalties Regulations 2011* are amended.

### **Clause 331. Schedule amended (Prescribed Acts)**

This clause amends the Schedule to the *Environmental Offences and Penalties Regulations 2011* by inserting a reference to this Act.

## **Division 9 Fines and Penalties (Recovery) Regulations 2001**

### **Clause 332. Regulations amended**

This clause identifies that the *Fines and Penalties (Recovery) Regulations 2001* are amended.

### **Clause 333. Schedule 1 amended**

This clause amends Schedule 1 to the *Fines and Penalties (Recovery) Regulations 2001* by inserting a reference to this Act.

## **Division 10 Northern Territory Aboriginal Sacred Sites Regulations 2004**

### **Clause 334. Regulations amended**

This clause identifies that the *Northern Territory Aboriginal Sacred Sites Regulations 2004* are amended.

### **Clause 335. Schedule 1 amended (Guidelines for classifying applications)**

This clause omits an existing reference to environmental impact assessment processes under the *Environmental Assessment Act 1982* and replaces it with a reference to this Act.

## **Division 11 Petroleum (Environment) Regulations 2016**

### **Clause 336. Regulations amended**

This clause identifies that the *Petroleum (Environment) Regulations 2016* are amended.

### **Clause 337. Regulation 3 amended (Definitions)**

This clause omits certain definitions related to the environmental impact assessment process which make reference to the *Environmental Assessment Act 1982*.

### **Clause 338. Regulation 9 amended (Approval criteria for plan)**

This clause omits a reference to environmental impact assessment processes under the *Environmental Assessment Act 1982* and replaces it with a prohibition on the approval of an environment management plan until processes under this Act have been considered and completed. It also makes other minor drafting amendments that are required to the regulation as a consequence of these changes.

### **Clause 339. Regulation 12 amended (Approval notice and statement of reasons)**

This clause omits references to obligations of the Minister which are associated with the outcomes of environmental impact assessment processes. These are no longer required as a consequence of the amendments to regulation 9.

### **Clause 340. Regulation 13 amended (refusal notice and statement of reasons)**

This clause omits references to obligations of the Minister which are associated with the outcomes of environmental impact assessment processes. These are no longer required as a consequence of the amendments to regulation 9.

### **Clause 341. New Part 5 inserted**

This clause inserts a new Part 5 into the *Petroleum (Environment) Regulations 2016*. This new Part is associated with clause 300 which provides that an environmental approval is not required to be granted if an assessment report is completed under the *Environmental Assessment Act 1982* before the commencement of this Act. The new part operates to ensure that environmental management plans can be approved under the *Petroleum (Environment) Regulations 2016*, notwithstanding the amendments to those Regulations under these transitional arrangements.

**Division 12 Repeal of Part**

This is a technical clause that identifies that Part 15 is repealed on the day after the part commences. It is a standard provision for principal legislation containing consequential amendments.

**SCHEDULE REVIEWABLE DECISIONS AND AFFECTED PERSONS**

This establishes the Schedule. The Schedule identifies what types of decisions can be reviewed by the Northern Territory Civil and Administrative Tribunal (NTCAT) and the person that can seek the review.