



10 September 2018

Legislative Assembly of the Northern Territory
Social Policy Scrutiny Committee
Darwin

Submission on Northern Territory Environment Protection Authority Amendment Bill

1. Confusion in legislative and regulatory reforms

As an approach to ecologically sustainable development and environmental protection, the draft environmental regulatory reform document circulated last year by the Department of Environment and Natural Resources (DENR) and the more recent draft legislation are well-researched and mostly adequate documents.

What is missing is the bigger picture or context of all the current reforms and where do people and communities get considered?

My key concern is that 'ecologically sustainable development' defines 'environment' quite narrowly and does not adequately consider impacts on people and communities, or the nuanced complexity of issues that people care about. This has a flow-on effect to the process of assessment and some of the language used in reform documents.

It is acknowledged that there has been a comprehensive approach to legislative and regulatory reform within Government over the past two years. However, from an outsider's perspective, it is confusing to understand the big picture on how these reforms are progressing. Different sections of government appear to be working on environmental reforms, regulatory reforms, implementation of fracking recommendations, various mining regulations and changes to petroleum regulations, often in silos, with ad hoc external consultation.

I am aware that the Department of the Chief Minister is developing a social impact assessment policy. Perhaps my concerns will be allayed in this document. However, as yet there has been no external consultation on this important policy.

I am also aware that further consultation is proposed on the Draft Environment Protection Bill and Regulations. Perhaps my concerns will be allayed there.

However, I provide the following submission, based on the precautionary principle of providing input before it's too late.

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2. Engagement is not the same as providing feedback

Impacts on people and communities are a key source of community frustration, distrust, project delays and cost blow-outs for projects, as well as reputation and political damage to government and proponents.

Early and better engagement means input to good planning (before key decisions are made), gives the public a voice through good process, gives equal weight to local knowledge and technical advice in decision-making and builds trust and collaborative relationships. Done well, it should provide:

- greater certainty to proponents about what needs to be addressed during impact assessment studies
- an early warning signal for potential 'show stopper' issues
- ongoing adaptive management to identify and address emerging issues.

Unfortunately the word 'engagement' has come to mean everything from telling people what has been decided to persuasion and public relations. Therefore, use of the term should be defined and clarified.

Engagement means giving impacted and interested people and communities input to decision-making on matters that affect them.

The level of engagement (or public participation) required for project assessments should be proportionate to the type and scale of project (as defined in early scoping):

- informing – telling people what is planned
- consulting – asking people for input before decisions are made
- actively involving through collaborative or deliberative engagement techniques.

In August 2018, the EIANZ NT was circulated a copy of a policy document for comment (dated February 2018), described as 'Opportunities and Timeframes for Community Engagement in the Environmental Impact Process'.

This document merely outlines the statutory points in the assessment process where the public can provide feedback on terms of reference and draft environmental impact statements. It should not be described as 'engagement'.

While it adds accountability and transparency to define points in the statutory process where the public can have input, it is far more important to mandate that proponents engage early with communities to identify matters or issues of concern. Identification of material issues, as identified by the public, should inform Terms of Reference and the depth and breadth of studies required – but without being so prescriptive that emerging issues are not captured.

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If engagement starts early, along with good communication and feedback to communities on how their input was considered, the statutory processes should be just a closing of the loop.

Ideally, engagement would start at a strategic or regional level of planning, when the community can have a real say on the type and scale of development they will support based on a good understanding of potential beneficial and detriment impacts.

Proponents should be required to provide plain English summary documents at the start of the process to ensure the public is aware of the nature and implications of a project and to inform objective feedback. This should be repeated before environmental studies are lodged to summarise findings and any changes made to project descriptions, rather than expecting the public to wade through hundreds or thousands of pages of impact assessment documents. This is particularly important for marginalised and disadvantaged communities.

See the recent Canadian and New South Wales reforms on this.

3. Ecologically sustainable development – who is looking after the people?

I am concerned at the continued use of the term ‘ecologically sustainable development’ to cover social, cultural and economic impacts. This really covers only impacts that arise from our exploitation of natural resources. While this is important, and most ecological impacts have social consequences, the approach does not adequately deal with social sustainability (thriving communities), cultural sustainability (maintaining strong cultures and connections to country) and economic sustainability (equitable distribution of benefits and costs and economic diversification rather than short-term dependence on big projects).

It is suggested that legislation incorporate a statement that projects will be assessed for their environmental, social, economic and cultural impacts, or their impact on the sustainability of social, cultural, economic, health and ecological environments. Terms of Reference or Guidelines would be informed by an early issues-based approach to scoping and risk and opportunity assessment.

As long as people and communities are merely a ‘factor’ in assessment objectives, they will continue to appear as an afterthought to ‘The Environment’. Social should be more than a factor. It should be one of the pillars on which economic development and impact assessment is based.

This is important because most of the impacts people and communities worry about (positive and negative) are not captured by impact assessment framed only from the perspective of ecological sustainability (eg influx of workers, road safety, social infrastructure, industrialisation, community conflict, community development, positive and negative impacts on community wellbeing, loss of control and disempowerment).

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The Northern Territory has adopted the West Australian approach and definitions of the 'surroundings of man/humans' as they relate to social, cultural and economic aspects/matters. Although it is often argued that this definition captures social, cultural and economic impacts, it is vague, confusing and incomplete.

The NTEPA's remit is clearly driven by protection of the natural 'environment' and ecological impacts, as reflected in its staffing, strategic plan, capacity and terminologies.

Some factors worth considering:

- Australia's National Strategy for Ecologically Sustainable Development was developed in 1992 and does not reflect contemporary approaches to impact assessment. Australia has since (in 2015) signed up to the far broader 17 Sustainable Development Goals.
- In Western Australia, there is no mandate to consider social impact assessments. A Guidance Note issued by the WA EPA outlines that for 'social surroundings' to be considered there must be a 'clear link between a proposal or scheme's impact on the physical or biological surroundings' and the subsequent impact on aesthetic, cultural, ecological or social aspects.
- Canada has moved to a more contemporary description of the 'five pillars' of sustainability as being social, economic, cultural, environmental and health. Recent reform documents refer to a Federal 'impact assessment' agency.
- The World Bank and international finance bodies have guidelines that refer to 'Environmental and Social Impact Assessment' (ESIA), with much broader definitions of what should be covered.
- Even the draft NT Petroleum Regulations had a broader definition, covering 'the wellbeing of humans, structures made or modified by humans, the amenity values of an area and economic, cultural and social conditions', ie not just the physical environment but social and economic aspects as well. Core objectives included: 'To enhance individual and community wellbeing by following a path of economic development that safeguards the welfare of future generations'.

Looking at social issues through a quantitative, natural science lens leads to confusing use of terminology, for example, the use of words such as 'values'. In an ecological sense, this relates to the social, economic/commercial, recreational and aesthetic values of the natural environment. In sociological terms, values are the norms and beliefs that underlie interests and behaviours. This covers a range of issues not captured by 'ecologically sustainable development' (fears, aspirations, demographic composition, the social fabric or cohesion of a community, health and wellbeing, poverty and disadvantage and human rights for example).

The focus on ecologically sustainable development would be less problematic if there were other statutory processes to adequately consider social, cultural, health and economic impacts. However, at present, the environmental approvals process is the only time proponents (including Government) must consider and report on impacts of policies and projects on people and communities. There is no

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separate consideration of these issues, therefore 'environmental' impact studies are the only opportunity to provide evidence-based reports, incorporating community feedback, to inform decision-makers.

While other States in Australia also use variations of the Ecologically Sustainable Development definitions of the 'environment' (eg Section 4(1) of the NSW *EP&A Act* defines 'environment' to include 'all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings) many have additional processes to consider non-biophysical impacts. For example:

- The Queensland Department of State Development now requires social impact assessments and management plans for resource projects that meet defined triggers. The State's quite prescriptive approach, backed by social and economic guideline documents, has provision for audits and third party reviews post-approvals. A social impact assessment may be required under the *State Development and Public Works Organisation Act 1971* or the *Environmental Protection Act 1994*.
- The New South Wales Department of Planning and the Environment, as part of its current regulatory reforms, in September 2017 published guidelines for social impact assessments that incorporate early scoping to inform the Secretary's guidelines and provisions to ensure potential social impacts are managed in a transparent and accountable way post-approval. Social impacts are conceptualised in line with the International Association for Impact Assessment (IAIA) 2003 Principles and 2015 Guidelines.
- The South Australian Government's process for Major Development Assessment includes a guideline saying proponents can expect their proposal will be assessed under the State's *Development Act 1993* 'based on an evaluation of environmental, social and economic impacts and how these can be managed'. This is separate to the State's *Environmental Protection Act*.

4. Social policy vacuum

Effective consideration of social, economic and cultural impacts of policies and projects requires:

- a mandate (regulation or legislation)
- capacity (resources)
- skills (professional qualifications and experience).

The NTEPA's current mandate, capacity and skills are in the biophysical fields. This is not a criticism. A rigorous assessment capacity for biophysical impacts is critical to public confidence. However, the implications of a narrow mandate are that social, cultural and economic factors become the 'poor cousins' of the impact assessment system and the evidence base presented to decision-makers. This narrow mandate manifests itself in poor use of social science and economic terminology in Terms of Reference/Guidelines and Assessment Reports as well as variable scrutiny and assessment of impact studies.

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In addition to lacking the scope of the Sustainable Development Goals, the current environmental reforms appear to suffer from gaps in the Territory's overarching policy framework to ensure decision-making gives equal weight to social, cultural, economic, health and environmental considerations of projects and policies.

The previous Labor Government in 2009 issued the 2030 Strategic Framework, based on intensive public consultation. This policy framework was sometimes cited in EPA assessment reports as part of a broad scope of considerations that would be taken account of in decision-making:

- health and wellbeing
- economic sustainability
- society
- environment
- knowledge, creativity and innovation
- education.

The former CLP Government issued a 'Framing the Future' document that covered a prosperous economy, strong society, confident culture, and a balanced environment.

It is hoped this broader policy scope will be captured in the pending social policy.

5. Socio-economic confusion

Although there is cross-over between social and economic impact assessment, it is suggested these should be separated for large projects. Terms of Reference at present are very loaded towards cost-benefit analysis and project feasibility indicators rather than social and cultural. Most economic reports are based on modelling that often inflates workforce benefits and barely considers impacts (positive and negative) at a local level (eg inflationary pressures, distributive justice, the dangers of dependence on large projects, longer-term economic diversification and how Aboriginal communities, for example, might define a 'sustainable economy').

For a better approach, see the New South Wales Department of Planning and Environment's "Guidelines for the economic assessment of mining and coal seam gas proposals" and technical guidance notes. The Guidelines discuss the difficulty of valuations of some factors of impact assessment, the key features of cost-benefit analysis and the importance of a local effects analysis (LEA).

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6. Cultural heritage studies are not the same as a 'cultural impact assessment'

The terms cultural assessment and cultural heritage impact assessment are often used as if they mean the same thing. Cultural heritage and sacred site identification generally refer to an archaeological assessment of relics of the past (although the better assessments will incorporate anthropological perspectives on how disturbance might impact on continued cultural and social values in line with the Burra Charter).

Cultural impact assessment is a process of understanding intangible cultural and spiritual connections to land and how projects might disturb living cultures, including traditional livelihoods, governance and spiritual connections to country. For example, how is cultural identity affected by Aboriginal people joining a workforce with different cultural norms and practices and how do widely differing communities (or groups within communities) weigh up competing values and potential benefits and negative impacts.

Disturbance to sacred sites and declared heritage areas are covered by specific legislation and are the responsibility of the Aboriginal Areas Protection Authority and Heritage Branch, neither of which has a mandate to consider broader cultural impacts.

While cultural impacts can be covered in social studies, where they are likely to be significant, cultural impacts are better considered in detailed anthropological studies with strong input by affected Aboriginal peoples.

7. What happens next? Do studies just gather dust?

The best impact assessment system in the world is meaningless if there is no monitoring and management of potential positive and negative impacts and commitments made by proponents.

At present, there appears to be no mechanism for this to happen in the Northern Territory except when companies take their social performance seriously and issue sustainability reports. Many larger companies adhere to Minerals Council of Australia guidelines or international reporting mechanisms such as the Global Reporting Index.

However, compliance with recommendations in NTEPA assessment reports is otherwise not reported. The implementation of most projects is governed by non-public reporting such as mine management plans. Anecdotally, it would appear there is little continuity from one regulator to the next – or one project team to the next - on these issues. There is little incorporation of the social impact management plans and commitments made public in impact studies and NTEPA assessment reports.

This means monitoring and whole-of-life cycle compliance and reporting is neither transparent nor accountable, which might be seen to make a bit of a mockery of the time and effort expended on consultation and social impact studies.

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8. Human rights should be part of project assessment

Contemporary impact assessment incorporates a focus on human rights, particularly social justice and equity issues for projects likely to impact on disadvantaged or marginalised peoples (see the UN Guiding Principles on Business and Human Rights). Particularly relevant in the Northern Territory context is a commitment to ensuring that Free, Prior and Informed Consent has been obtained for projects on Aboriginal land (a statutory responsibility of the Territory's land councils).

9. Guidelines

While the Economic and Social Impact Assessment Guidelines produced by the NTEPA in 2013 are a good start, it would be much better to refer proponents to the International Association for Impact Assessment (IAIA) 2003 Principles and 2015 Guidelines for Social Impact Assessment or the recent Social Impact Assessment Guidelines prepared by the NSW Department of Planning and the Environment. These contain a broader conceptualisation of social impacts as well as good guidance for practitioners and assessors.

10. Risk

Risk, according to the Australia and New Zealand ISO risk management principles and guidelines, is the 'effect of uncertainty on objectives'. It is usually assessed as risk to projects not risk to people and communities. It is suggested that for social and cultural impact assessment, a better definition is that risk 'refers to uncertainty about and the severity of the consequences of an activity or event with respect to something that humans value'. This is in line with the more contemporary International Risk Governance Centre's 2017 Governance Framework.

Conclusion

In conclusion, this submission is directed at gaps in the current draft legislation and regulations but more particularly at perceived gaps in the wider context of how projects and policies that impact on people and communities are planned, assessed and managed.

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The views in this submission are the personal views of the author, based on her practical experience and current research and do not necessarily reflect the views of any of the above organisations.

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