



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Social Policy Scrutiny Committee**

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**Inquiry into the Northern  
Territory Environment Protection  
Authority Amendment Bill 2018**

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**October 2018**



# Contents

<b>Chair’s Preface .....</b>	<b>4</b>
<b>Committee Members .....</b>	<b>5</b>
<b>Committee Secretariat .....</b>	<b>6</b>
<b>Terms of Reference .....</b>	<b>7</b>
<b>Recommendations .....</b>	<b>9</b>
<b>1 Introduction .....</b>	<b>10</b>
Introduction of the Bill .....	10
Conduct of the Inquiry .....	10
Outcome of Committee’s Consideration .....	10
Report Structure .....	11
<b>2 Provisions of the Bill.....</b>	<b>12</b>
Background to the Bill .....	12
Purpose and Overview of the Bill .....	12
<b>3 Examination of the Bill.....</b>	<b>14</b>
Introduction.....	14
Functions and Powers.....	14
Membership.....	14
Leave of Absence.....	16
Acting Members.....	16
Statement of Intent .....	17
Regard to Principles of Ecologically Sustainable Development.....	19
Advice of NT EPA on Specific Matters .....	20
Offence Provisions .....	21
<b>Appendix 1: Submissions Received.....</b>	<b>23</b>
<b>Appendix 2: Public Briefing and Public Hearings.....</b>	<b>24</b>
<b>Bibliography.....</b>	<b>25</b>

## Chair's Preface

This report details the Committee's finding regarding its examination of the Northern Territory Environment Protection Authority Amendment Bill 2018. As the first step in the delivery of the Government's environmental regulatory reform process, the Bill seeks to improve the governance of the NT Environment Protection Authority (NT EPA), provide greater flexibility in its membership, and give it new responsibilities to undertake systemic reviews of the Territory's environmental management system.

The Committee has recommended that the Assembly pass the Bill with the proposed amendment set out in recommendation two. This amendment seeks to ensure that the NT EPA's Statements of Intent, a key component of the proposed amendments to improve the governance and accountability of the authority, must be tabled in the Assembly by the Minister.

On behalf of the Committee, I would like to thank all those who made submissions to the Committee's inquiry and the Department of Environment and Resources for appear for briefing the Committee. I would also like to thank my fellow Committee members for their bipartisan commitment to the legislative review process.



**Ms Ngaree Ah Kit MLA**

**Chair**

## Committee Members

	<b>Ms Ngaree Ah Kit MLA</b> Member for Karama	
	<b>Party:</b>	Territory Labor
	<b>Parliamentary Position:</b>	Acting Deputy Speaker
	<b>Committee Membership</b>	
	<b>Standing:</b>	Standing Orders and Members' Interests
	<b>Sessional:</b>	Social Policy Scrutiny
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	<b>Parliamentary Position:</b>	Acting Deputy Speaker
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	<b>Standing:</b>	Standing Orders and Members' Interests
	<b>Sessional:</b>	Social Policy Scrutiny
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	<b>Party:</b>	Country Liberals
	<b>Parliamentary Position:</b>	Deputy Leader of the Opposition, Opposition Whip
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	<b>Sessional:</b>	Social Policy Scrutiny
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	<b>Committee Membership</b>	
	<b>Standing:</b>	House
	<b>Sessional:</b>	Social Policy Scrutiny
	<b>Select:</b>	Northern Territory Harm Reduction Strategies for Addictive Behaviours
	<b>Mr Chansey Paech MLA</b> Member for Namatjira	
	<b>Party:</b>	Territory Labor
	<b>Parliamentary Position:</b>	Deputy Speaker
	<b>Committee Membership</b>	
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## **Acknowledgements**

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

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## Terms of Reference

### Sessional Order 13

#### *Establishment of Scrutiny Committees*

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
  - (a) The Social Policy Scrutiny Committee
  - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
  - (a) any matter within its subject area referred to it:
    - (i) by the Assembly;
    - (ii) by a Minister; or
    - (iii) on its own motion.
  - (b) any bill referred to it by the Assembly;
  - (c) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
  - (I) provides for the compulsory acquisition of property only with fair compensation; and
  - (J) has sufficient regard to Aboriginal tradition; and
  - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

## **Recommendations**

### **Recommendation 1**

The Committee recommends that the Legislative Assembly pass the Northern Territory Environment Protection Authority Amendment Bill with the proposed amendments set out in recommendation 2.

### **Recommendation 2**

The Committee recommends that proposed section 24C be amended to require that the Minister must table a copy of the completed Statement of Intent in the Legislative Assembly within 6 sitting days of receipt.

# 1 Introduction

## Introduction of the Bill

- 1.1 The Northern Territory Environment Protection Authority Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Minister for Environment and Natural Resources, the Hon Eva Lawler MLA, on 23 August 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 27 November 2018.<sup>1</sup>

## Conduct of the Inquiry

- 1.2 On 24 August 2018 the Committee called for submissions by 19 September 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 2, the Committee received eleven submissions to its inquiry. The Committee held a public briefing with the Department of Environment and Natural Resources on 10 September 2018.

## Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
  - (ii) whether the Assembly should amend the bill;
  - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
  - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendation 2.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Northern Territory Environment Protection Authority Amendment Bill with the proposed amendment set out in recommendation 2.**

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<sup>1</sup> Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – Thursday 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, pp.26-7

## **Report Structure**

- 1.6 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

## 2 Provisions of the Bill

### Background to the Bill

2.1 In presenting the Bill, the Minister for Environment and Natural Resources advised the Assembly that the proposed amendments to the *Northern Territory Environment Protection Authority Act* seek to:

improve the governance of the Northern Territory EPA [Environment Protection Authority], provide greater flexibility in its membership and give it the new responsibility of 'assurance monitor'.<sup>2</sup>

2.2 The Minister further noted that the Bill was:

an exciting first step in the delivery of the government's environmental regulatory reform process. ... The Bill also supports the implementation of this government's commitment to improve regulatory processes associated with the management of onshore oil and gas activities, including hydraulic fracturing, by introducing changes that will allow Ministers to seek the authority's advice on a range of specific proposals and plans targeting improved environmental management and protection.<sup>3</sup>

### Purpose and Overview of the Bill

2.3 As highlighted in the Explanatory Statement and the Statement of Compatibility with Human Rights, the Northern Territory Environment Protection Authority Amendment Bill:

- increases the NT EPA membership, allowing for four to seven members, thereby providing flexibility in responding to emerging industry types or changing workloads,
- introduces a requirement for the NT EPA to prepare a 'statement of intent' at least every two years outlining the NT EPA's priorities for the period covered by the statement and how these priorities relate to the objectives of the NT EPA and how they contribute to the Territory's environmental management and economic development objectives. The amendment also requires the NT EPA to report on its fulfilment of the activities under the statement in its annual report,
- introduces a new power for the NT EPA to provide environmental management reports. These reports are designed to give the NT EPA the power to provide holistic advice about the functioning of the Territory's system of environmental management,
- introduces a requirement that, at the request of a Minister, the NT EPA must advise that Minister about any proposal, policy, plan or other measure to manage the environmental impact of development on the environment,

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<sup>2</sup> Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – Thursday 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.26

<sup>3</sup> Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – Thursday 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.26

- amends the matters that the NT EPA may consider in performing its advisory functions and articulates the principles of ecologically sustainable development as requirements for consideration.<sup>4</sup>

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<sup>4</sup> Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>, pp. 1-5; Statement of Compatibility with Human Rights, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.1

## 3 Examination of the Bill

### Introduction

3.1 While the majority of submissions were generally supportive of the proposed amendments in the Bill, a number of submitters sought clarification on the anticipated operation of the Bill while others provided suggestions as to how the Bill might be improved. The following discussion considers the main issues raised in the evidence received along with the responses to the Committee's written questions provided by the Department of Environment and Natural Resources (the Department).

### Functions and Powers

3.2 The submissions from Pauline Cass, 1 Territory and Katherine Marchment raised concern that the Bill amends section 8 by deleting subsection (4) which required that in exercising its powers and performing its functions, 'the NT EPA must integrate both long-term and short-term economic, environmental and social equity considerations in its decision making'.<sup>5</sup>

#### **Committee's Comments**

3.3 By way of clarification, the Committee notes that subsection 8(4) is now included at proposed section 25AA(2)(c) as one of the principles of ecologically sustainable development that the NT EPA must have regard to when providing advice or a report to the Minister on general matters, and has been rephrased as follows:

- (c) decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations.

### Membership

3.4 The Bill amends section 10(1)(a) to provide for a membership of at least four and not more than seven members, rather than the five members as currently provided for. As noted in the Explanatory Statement this amendment provides:

greater flexibility in the appointment of members and enables the Administrator to appoint additional members where there are suitable candidates and not appoint members where recruitment rounds do not identify suitable candidates; providing the minimum number of appointees is maintained. This will better position the EPA to respond to emerging industries in the future.<sup>6</sup>

3.5 The submissions received from the Environmental Defenders Office NT (EDONT), Lock the Gate Alliance and the joint submission from the Arid Lands Environment Centre and the Environment Centre NT (ALEC & ECNT) suggested that the Bill

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<sup>5</sup> Pauline Cass, Submission No.7, p.1; 1 Territory, Submission No. 10, p.1; Katherine Marchment, Submission No. 11, p.1

<sup>6</sup> Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.2

should also reconsider the skills, knowledge and experience required of prospective members of the NT EPA.<sup>7</sup>

3.6 Pursuant to section 10(2), the Committee notes that the Administrator may only appoint a person to be a member of the NT EPA if:

- (a) the person is not a public sector employee; and
- (b) the Administrator is satisfied that the person has skills, knowledge and experience in one or more of the following areas:
  - (i) environmental science;
  - (ii) environmental and natural resource management;
  - (iii) waste management and pollution control;
  - (iv) economic analysis;
  - (v) social analysis;
  - (vi) business;
  - (vii) environmental law;
  - (viii) management in a regulatory field.

3.7 Section 10(3) further provides that before appointing a person to be a member of the NT EPA, the Administrator:

- (a) may have regard to the person's skills, knowledge or experience relating to one or more of the following:
  - (i) regional areas and issues;
  - (ii) indigenous issues;
  - (iii) working with the community; and
- (b) must have regard to the range and level of skills, knowledge and experience required among the members of the NT EPA to enable it to exercise its powers and perform its functions effectively.

3.8 EDONT expressed the view that:

while skills in economic analysis and business may support members' understanding of their operating context, they are not relevant skills to undertaking the EPA's core functions of assessing environmental impact statements and regulating pollution and waste (and now, hydraulic fracturing), which require clear technical expertise. We submit that there should be, at a minimum, a guarantee that all members have relevant environmental expertise.<sup>8</sup>

3.9 Similarly, the submission from ALEC & ECNT suggested that:

business and industry experience should not count as sufficient expertise to qualify for the role of an environmental regulator. The EPA is first and foremost an institution of environmental protection not a driver of economic development.

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<sup>7</sup> Environmental Defenders Office NT, Submission No. 6, p.2; Arid Lands Environment Centre and Environment Centre NT, Submission No. 8, p.2; Lock the Gate Alliance, Submission No. 9, p.1

<sup>8</sup> Environmental Defenders Office NT, Submission No. 6, p.2

... Membership should include specific criteria prohibiting members who have links to specialised industries. The provisions relating to membership should be further defined to ensure that any new members have a broad range of experience that is not restricted to the economics or technical issues of one industry.<sup>9</sup>

### **Committee's Comments**

3.10 While acknowledging the concerns of submitters, the Committee notes that the membership criteria have been developed to ensure that the NT EPA has the necessary skills base to exercise its powers and perform its functions effectively. As noted above, before making appointments the Administrator must have regard to the range of skills, knowledge and experience required of members, thereby ensuring that an appropriate balance is maintained.

### **Leave of Absence**

3.11 Proposed section 13 introduces a limitation on the NT EPA's powers to grant a leave of absence to a member by providing that the NT EPA cannot grant leave exceeding a period of 12 months. As noted in the Explanatory Statement:

this clause addresses a gap in the existing legislation under which the NT EPA could provide a leave of absence for any period. It supports a new power for the Minister to appoint acting members where a member of the NT EPA will be absent for a period and new termination powers of the Administrator.<sup>10</sup>

3.12 While supporting this amendment, EDONT queried whether the power to approve a leave of absence:

should instead rest with the Minister (rather than the EPA), which would be consistent with other roles and powers of the Minister in section 11 of the Act.<sup>11</sup>

### **Committee's Comments**

3.13 The Committee is of the view that while it is appropriate that the power to appoint persons to acting positions, such as that provided for under sections 11 or 13A, should rest with the Minister, decisions regarding whether a member should be granted a leave of absence is a matter for the NT EPA to determine. The Committee notes that this is consistent with section 9(1) of the Act which provides that, as an independent statutory authority, 'the NT EPA is not subject to the direction or control of the Minister in the exercise of its powers or the performance of its functions.'

### **Acting Members**

3.14 Proposed section 13A introduces a new power whereby the Minister may appoint acting members where a member of the NT EPA will be absent for a period of time. 1 Territory and Katherine Marchment raised concerns that this new power has been

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<sup>9</sup> Arid Lands Environment Centre and Environment Centre NT, Submission No. 8, p.2

<sup>10</sup> Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.2

<sup>11</sup> Environmental Defenders Office, Submission No. 6, p.2

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provided to the Minister rather than the Administrator who is responsible for the appointment of members to the NT EPA.<sup>12</sup>

### **Committee's Comments**

- 3.15 While acknowledging the concern raised by submitters, the Committee notes that under proposed section 13A(2) the Minister may only appoint a person as an acting member if 'the Minister is satisfied that the person has skills, knowledge or experience similar to the appointed member for whom the person is to act'. Further, proposed section 13A(4) provides that the Minister may only appoint a person as an acting member for a single period not exceeding 12 months or for consecutive periods totalling not more than 12 months.
- 3.16 The Committee further notes that this new power is consistent with existing provisions under section 11. This section provides that the Administrator must appoint one of the appointed members to be the chairperson of the NT EPA. However, sections 11(3) and (4) empower the Minister to appoint a member of the NT EPA to act in the office of chairperson during a vacancy in the office or during a period when the chairperson is unable to perform the duties of the office for a single period not exceeding 6 months or for consecutive periods totalling not more than 6 months.

### **Statement of Intent**

- 3.17 To improve the governance of the NT EPA, proposed section 24A introduces a requirement whereby at least once every 2 years, the NT EPA must provide the Minister with a Statement of Intent. In addition to any other matters the NT EPA considers appropriate, proposed section 24A(2) specifies that the statement must include:
- (a) the NT EPA's priorities for the period covered by the statement;
  - (b) how the NT EPA's priorities relate to the objectives of the NT EPA;
  - (c) the nature and scope of the activities it intends to carry out to meet the NT EPA's priorities during the period covered by the statement;
  - (d) the manner in which the NT EPA's priorities contribute to the Territory's objectives in relation to environmental management and economic development.

The Committee further notes that, pursuant to proposed section 33, the NT EPA is required to report on its fulfilment of the activities under a Statement of Intent in its annual report.

- 3.18 As provided for under proposed section 24B, the NT EPA is required to consult with the Minister in the preparation of the Statement of Intent. Provided that the statement does not include activities that are inconsistent with the objectives of the NT EPA, as

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<sup>12</sup> 1 Territory, Submission No. 10, p.1; Katherine Marchment, Submission No. 11, p.1

provided for under section 7, the Minister is required to accept the statement. While supporting the intent behind this provision, EDONT considered that:

it would be appropriate to insert a further transparency mechanism to ensure that the Minister does not politically interfere in setting the priorities of the EPA.<sup>13</sup>

- 3.19 EDONT and the Environment Institute of Australia and New Zealand also expressed the view that the requirement for publication by the NT EPA of the Statement of Intent should be more specific.<sup>14</sup> EDONT expressed the view that, as drafted, the amendment:

proposes an open-ended discretion that enables the EPA to determine publication 'as soon as practicable ... in the way it considers appropriate'. This provision gives unnecessary and excessive discretion to the EPA, undermining transparency and trust in decision-making. Access to information is fundamental in an accountable system of government. We therefore suggest a simple amendment to the Bill to require that 'within 7 days of approval by the Minister, the statement of intent must be published on an appropriate government website.'<sup>15</sup>

- 3.20 The Committee sought clarification from the Department as to why proposed section 24C neither requires the Minister to table the Statement of Intent in a manner similar to that provided for under section 39(7)(a) of *Government Owned Corporations Act* (NT), nor specifies a timeframe within which the NT EPA is required to make the statement public. In response the Department advised that:

It was not considered necessary for the legislation to prescriptively require the Minister to table the Statement of Intent as this is an instrument of the NT EPA and is published by the NT EPA. The legislation would not, however, preclude the Minister from tabling the Statement of Intent should they so choose.

If the Minister determined to table the Statement of Intent, usual processes would be followed consistent with the timing for tabling other documents prepared under the Act which would be within 6 sitting days of it being accepted by the Minister.

This section requires the NT EPA to publish the statement 'as soon as practicable' after it has been accepted by the Minister.

While consideration was given to including a specific timeframe in this section it was noted that there are administrative processes associated with publishing information and that imposition of a specific timeframe would reduce flexibility in this approach.<sup>16</sup>

### **Committee's Comments**

- 3.21 The Committee notes that the potential for political interference in the development of the Statement of Intent is limited by section 9 which provides that neither the NT EPA nor its members are subject to the direction or control of the Minister in the exercise of their powers or the performance of their functions. As noted in the

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<sup>13</sup> Environmental Defenders Office, Submission No. 6, p.3

<sup>14</sup> Environmental Defenders Office, Submission No. 6, p.3; Environment Institute of Australia and New Zealand, Submission No. 3, p.1

<sup>15</sup> Environmental Defenders Office, Submission No. 6, p.3

<sup>16</sup> Department of Environment and Natural Resources, *Responses to Committee's Queries*, 26 September 2018, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.1

Explanatory Statement, in instances where the Minister considers that the Statement of Intent is inconsistent with the NT EPA's objectives:

the Minister would advise the NT EPA of that view and the NT EPA and the Minister would work cooperatively to identify amendments to the proposed statement.<sup>17</sup>

The Committee further notes that this is consistent with the approach taken in the development of Statements of Corporate Intent provided for under section 39 of the *Government Owned Corporations Act* (NT).

- 3.22 While it is acknowledged that the Statement of Intent is an instrument of the NT EPA, the Committee notes that in presenting the Bill the Minister advised the Assembly that the requirement for the NT EPA to produce a Statement of Intent and subsequently report against it in its annual report is a governance measure which provides a system of public accountability.<sup>18</sup>
- 3.23 The Committee is, therefore, of the view that the NT EPA's Statements of Intent should be tabled in the Assembly in a manner similar to that provided for under s39(7)(a) of the *Government Owned Corporations Act* (NT), thereby ensuring that the statement is made public in a timely manner.

## Recommendation 2

**The Committee recommends that proposed section 24C be amended to require that the Minister must table a copy of the completed Statement of Intent in the Legislative Assembly within 6 sitting days of receipt.**

## Regard to Principles of Ecologically Sustainable Development

- 3.24 Proposed section 25AA(1) requires that in providing advice and reports on general matters the NT EPA must have regard to the principles of ecologically sustainable development (ESD) that 'the EPA considers relevant to the advice or report.' EDONT and Lock the Gate Alliance suggested that this phrase should be removed as it provides:

excessive discretion to the EPA to disregard the principles of ESD based on its own opinion, rather than on any objective criteria ... [and] significantly undermines transparent and consistent decision-making processes. Further it is simply not required, given the test that is proposed is 'to have regard to'.<sup>19</sup>

- 3.25 The Department advised the Committee that:

the phrase "the NT EPA considers relevant to the advice or report" was included in recognition that not all principles would be relevant to all advices or reports prepared by the NT EPA. For example, the principle contained at proposed section 25AA(2)(e) regarding improved valuation, pricing and incentive mechanisms would not be relevant to a report prepared under section 28 which discussed the environmental quality of a region. The effect of removing this

<sup>17</sup> Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018* (Serial 63), <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.3

<sup>18</sup> Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.26

<sup>19</sup> Environmental Defenders Office, Submission No. 6, p.3; Lock the Gate Alliance, Submission No. 9, p.2

phrase would be to require the NT EPA to consider principles that are not relevant to the advice or report being prepared.<sup>20</sup>

### **Committee's Comments**

3.26 The Committee agrees with the Department's response and notes that, as an independent statutory authority, it is appropriate that the NT EPA be afforded a certain amount of discretion to determine the extent to which the principles of ESD are applicable to the preparation of specific advice or reports.

### **Advice of NT EPA on Specific Matters**

3.27 Proposed section 29B introduces a requirement that, at the request of a Minister, the NT EPA 'must advise that Minister about any proposal, policy, plan or other measure to manage the environmental impact of development on the environment.' Proposed section 29C requires that in providing advice under section 29B, the NT EPA must have regard to any criteria specified in the request for advice and any other matters the NT EPA considers relevant.

3.28 EDONT and Lock the Gate Alliance expressed the view that, as with advice and reports on general matters that fall under Division 1, advice and reports on specific matters that fall under Division 2 should also have regard to the principles of ecologically sustainable development.<sup>21</sup> As EDONT explained:

While we understand that these provisions are 'enabling' in nature, at a very minimum it would seem clearly consistent with other parts of the Act that the EPA be required to consider its own objectives when providing advice under new section 29B.

Further we strongly submit that there be a specific requirement to apply the principles of ESD in this section. It is not clear to us why this approach has not been included, even though it has been included in the Bill where the EPA will provide advice on 'general matters' (under section 25AA). This omission is particularly surprising given recommendation 14.11 of the Fracking Inquiry explicitly requires 'that the principles of ESD must be *taken into account and applied by a decision-maker in respect of all decisions concerning any onshore shale gas industry*' (emphasis added). We consider the Bill should directly reflect this requirement to take into account and apply ESD principles in section 29C.<sup>22</sup>

3.29 By way of clarification, the Department advised the Committee as follows:

This Division is specifically designed to implement Government's commitments as part of the response to the Final Report of the Scientific Inquiry into Hydraulic Fracturing by ensuring that the Minister may request advice from the NT EPA regarding environmental management plans (EMPs) prepared under the Petroleum (Environment) Regulations.

Although this was the imperative for the new Division, the Division was drafted to have a broader and more flexible application, rather than limiting it to petroleum related matters or EMPs.

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<sup>20</sup> Department of Environment and Natural Resources, *Responses to Committee's Queries*, 26 September 2018, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.1

<sup>21</sup> Environmental Defenders Office, Submission No. 6, pp. 4-5; Lock the Gate Alliance, Submission No. 9, p.2

<sup>22</sup> Environmental Defenders Office, Submission No. 6, p.4

The Division does not require the NT EPA to consider the principles of ecologically sustainable development (ESD) outlined in proposed section 25AA because where the NT EPA is providing advice for the purposes of another piece of legislation, that legislation may require the decision maker to take into account specific matters, including principles of ESD which may be expressed differently to the NT EPA Act.

This is the case in relation to EMPs prepared under the Petroleum (Environment) Regulations. Those Regulations articulate the principles of ESD in regulation 4. Although the principles cover the same matters, they are expressed in slightly different language.

The exclusion of a specific obligation for the NT EPA to consider the principles of ESD under Division 2 avoids the NT EPA being potentially obliged to consider multiple expressions of the principles in preparing its advice under Division 2.

It should be noted that this would not prevent the NT EPA from considering those principles in preparing its advice, and further that the NT EPA as a matter of practice considers the principles in performing each of its powers and functions.<sup>23</sup>

### **Committee's Comments**

3.30 While acknowledging the concern raised by EDONT and Lock the Gate Alliance, the Committee is satisfied with the Department's response. As highlighted by the Department, as a matter of course the NT EPA is bound by its objectives as set out in section 7 which include:

- (a) to promote ecologically sustainable development;
- (b) to protect the environment, having regard to the need to enable ecologically sustainable development;
- (c) to promote effective waste management and waste minimisation strategies;
- (d) to enhance community and business confidence in the environmental protection regime of the Territory.

### **Offence Provisions**

3.31 The Bill amends the offence provisions contained in section 31 of the Act regarding 'Misleading information or document' and 'Confidentiality of information'. As highlighted in the Explanatory Statement:

These amendments clarify the elements of the offences and modernise the Act consistent with current drafting practices.<sup>24</sup>

3.32 While supporting the proposed amendments, the submissions from EDONT and ALEC & ECNT raised concerns regarding the proposed provisions for the offence of 'Misleading Information or document.'<sup>25</sup> EDONT suggested that the penalties for this offence remain inadequate:

<sup>23</sup> Department of Environment and Natural Resources, *Responses to Committee's Queries*, 26 September 2018, <https://parliament.nt.gov.au/committees/spsc/63-2018>, pp. 2-3

<sup>24</sup> Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>, p.5

<sup>25</sup> Environmental Defenders Office NT, Submission No. 6, p.5; Arid Lands Environment Centre and Environment Centre NT, Submission No. 8, p.4

A maximum penalty of 200 penalty units (\$31,000) is unlikely to act as an appropriate deterrent when a multi-million dollar project is at stake. We suggest this should be significantly increased.<sup>26</sup>

- 3.33 Concern was also raised regarding enforcement of this provision. ALEC & ECNT expressed the view that the proposed amendment:

Significantly tightens the offence provisions by requiring a successful charge to prove state of mind of two persons involved. This would be hard to prove and would therefore not act as an effective deterrent for people giving misleading or inaccurate information to the EPA. There should be a provision that requires all persons providing advice or material to the EPA to ensure that their information is accurate and reliable.<sup>27</sup>

- 3.34 EDONT raised a similar concern noting that:

It may be difficult to enforce these provisions, particularly with the requirement to prove the person had knowledge that the information was misleading. In these circumstances we would strongly suggest that the government consider further measures to be included in the Act to deliver better quality assurance over data and information provided, for example, by requiring consultants be professionally accredited to provide advice and reports under environmental impact assessment legislation.<sup>28</sup>

### **Committee's Comments**

- 3.35 With regards to EDONT's concern as to the adequacy of the penalty for this offence, the Committee notes that whereas the existing offence provisions provide for a maximum penalty of 200 penalty units, the proposed amendment now incorporates a maximum penalty of 200 penalty units 'or imprisonment for 2 years'. These penalties are consistent with equivalent offence provisions in other legislation in the Northern Territory and the Committee is satisfied that they will provide an effective deterrent against the giving of misleading information to the NT EPA.
- 3.36 While acknowledging the concerns raised regarding enforcement of the offence provisions, the Committee notes that, in contrast to the existing provisions, strict liability applies to proposed sections 31(1)(b) and (2)(b). The Committee further notes that inclusion of these offence provisions provides a clear indication that there is an expectation that all persons providing information to the NT EPA are responsible for ensuring that it is both accurate and reliable.

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<sup>26</sup> Environmental Defenders Office NT, Submission No. 6, p.5

<sup>27</sup> Arid Lands Environment Centre and Environment Centre NT, Submission No. 8, p.4

<sup>28</sup> Environmental Defenders Office NT, Submission No. 6, p.5

## Appendix 1: Submissions Received

### Submissions Received

1. Jane Munday Consulting
2. Minerals Council of Australia NT Division
3. Environment Institute of Australia and New Zealand
4. Justin Tutty – Private Citizen
5. Heidi Jennings – Private Citizen
6. Environmental Defenders Office NT
7. Pauline Cass – Private Citizen
8. Arid lands Environment Centre and Environment Centre NT
9. Lock the Gate Alliance
10. 1 Territory
11. Katherine Marchment – Private Citizen

### Note

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/63-2018>

## **Appendix 2: Public Briefing and Public Hearings**

### **Public Briefing – 10 September 2018**

#### ***Department of Environment and Natural Resources***

- Joanne Townsend: Chief Executive Officer
- Karen Avery: Executive Director, Environment Policy and Support
- Kathleen Davis: Director, Environment Policy

#### **Note**

Copies of hearing transcripts and tabled papers are available at:  
<https://parliament.nt.gov.au/committees/spsc/63-2018>

## Bibliography

Department of Environment and Natural Resources, *Responses to Committee's Queries*, 26 September 2018, <https://parliament.nt.gov.au/committees/spsc/63-2018>

Explanatory Statement, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>

*Environmental Management and Pollution Control Act 1994* (TAS)

*Government Owned Corporations Act* (NT)

*Northern Territory Environment Protection Authority Act* (NT)

Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63), <https://parliament.nt.gov.au/committees/spsc/63-2018>

Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>

Statement of Compatibility with Human Rights, *Northern Territory Environment Protection Authority Amendment Bill 2018 (Serial 63)*, <https://parliament.nt.gov.au/committees/spsc/63-2018>