



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

**Inquiry into the Water Legislation
Miscellaneous Amendments Bill
2019**

June 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Water Legislation Miscellaneous Amendments Bill 2019.

The primary purpose of this Bill is to modernise the Act and to address technical irregularities and administrative inefficiencies. The Committee received five submissions to its inquiry, four of which suggested amendments to the Bill. The key issues raised in submissions relate to amendments to the provisions governing the notification of water extraction licence decisions; membership of the Drillers' Qualification Advisory Committee; and renewal applications for water extraction licences.

Several submitters expressed concern that proposed amendments in relation to the notification of water extraction licence decisions would reduce transparency and limit effective public participation in the decision-making process. In addition, Protect NT Inc sought clarification regarding amendments to the conditions of membership of the Drillers' Qualification Advisory Committee.

Following consideration of the issues raised and the evidence received, the Committee has recommended the Assembly pass the Bill with the proposed amendments as set out in Recommendations 2 to 4.

On behalf of the Committee, I would like to thank all those who made submissions. The Committee also thanks the Department of Environment and Natural Resources for its advice regarding the issues raised. I would also like to thank the Department of the Legislative Assembly for the support provided to the Committee and my fellow Committee members for their bipartisan commitment to the legislative review process.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

Mr Tony Sievers MLA

Chair

Committee Members

	Tony Sievers MLA Member for Brennan	
	Party:	Territory Labor
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	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
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	Parliamentary Position	Government Whip
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	Standing:	Public Accounts
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	Lawrence Costa MLA Member for Arafura	
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On 22 March 2019, Member for Daly, Mr Gary Higgins MLA, was discharged from the Committee and replaced by the Member for Spillett, Mrs Lia Finocchiaro MLA.		

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Acknowledgments

The Committee acknowledges the organisations and individuals that have made written submissions to this inquiry and the Minister for Environment and Natural Resources for providing comments on concerns raised in submissions.

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 Water Legislation Miscellaneous Amendments Bill 2019 with the proposed amendments set out in Recommendations 2 - 4.

Recommendation 2

That proposed section 71B(2) be amended to include a requirement that the notice of intention to make a water extraction licence decision be published on an appropriate government website.

Recommendation 3

That the Department of Environment and Natural Resources amend their standard operating procedures to provide that letters of notification to owners include a request that the owner notify any tenants of the licence application.

Recommendation 4

That Regulation 13 be re-drafted to make it clear that the criteria set out in Regulation 13(2) only applies to six of the eight members of the Drillers' Qualifications Advisory Committee and does not apply to the 'users of drilling services' identified in Regulation 13(3).

1 Introduction

Introduction of the Bill

1.1 The Water Legislation Miscellaneous Amendments Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Minister for Environment and Natural Resources, the Hon Eva Lawler, MLA, on 13 March 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 20 June 2019.¹

Conduct of the Inquiry

1.2 On 13 March 2019 the Committee called for submissions by 17 April 2019. The call for submissions was advertised via 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 A, the Committee received five submissions to its inquiry.

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 the proposed amendments set out in Recommendations 2 - 4.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Water Legislation Miscellaneous Amendments Bill 2019 with the proposed amendments set out in Recommendations 2 - 4.

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.

¹ Hon Eva Lawler MLA, Minister for Environment and Natural Resources, *Draft Daily Hansard – Day 2 – 13 March 2019*, p. 1, <http://hdl.handle.net/10070/306549>.

2 Provisions of the Bill

Background to the Bill

2.1 The Water Legislation Miscellaneous Amendments Bill is primarily concerned with modernising the Act and supporting a more efficient and cost effective water trading environment. In presenting the Bill the Minister drew attention to previous amendments to the *Water Act 1992* (the Act) that were introduced in 2007 and which resulted in a new Part 6A requiring the Controller of Water Resources to:

publish a statement of reasons for either granting or refusing a water extraction licence. The amendments also required the establishment of a public register to report on licensing information. The new provisions were not intended to be complex. They partly met a National Water Initiative commitment to improve processes for public engagement in water allocation in the Territory.²

2.2 A number of the amendments made at this time are considered to have resulted in administrative inefficiencies which the current Amendment Bill aims to rectify. In addition, the Bill aims to modernise the Act by introducing a range of 'common sense improvements' that:

have been identified through the experience of working with the *Water Act*, including the work of water advisory committees, the Drillers Qualification Advisory Committee and the consultative and administrative processes associated with water allocation planning, licensing and permitting.³

Purpose and overview of the Bill

2.3 As noted in the Explanatory Statement, the purpose of the Bill:

is to address technical irregularities and administrative inefficiencies that have been identified in the administration of the *Water Act* and Water Regulations.⁴

2.4 Key areas addressed in the Bill include:

- Exclusion of certain types of applications for water extraction licences from provisions in Part 6 of the Act (cl 4).
- Requirements for advertising of notice of intention to make a water extraction licence decision and notifications to occupiers of adjacent land (cl 5).
- Service of documents – provides option for email (cl 6).
- Membership of the Drillers' Qualification Advisory Committee (cl 12).
- Requirement that renewal applications for water extraction licences be submitted not less than six months before the expiry date (cl 13).⁵

² Hon Eva Lawler MLA, Minister for Environment and Natural Resources, *Draft - Daily Hansard Day 2 – 13 March 2019*, p. 1, <http://hdl.handle.net/10070/306549>.

³ Hon Eva Lawler MLA, Minister for Environment and Natural Resources, *Draft - Daily Hansard Day 2 – 13 March 2019*, p. 2, <http://hdl.handle.net/10070/306549>.

⁴ Explanatory Statement, *Water Legislation Miscellaneous Amendments Bill 2019*, (Serial 81), p. 1, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

⁵ Hon Eva Lawler MLA, Minister for Environment and Natural Resources, *Draft - Daily Hansard Day 2 – 13 March 2019*, pp. 1-2, <http://hdl.handle.net/10070/306549>.

3 Examination of the Bill

Introduction

3.1 The Minerals Council of Australia NT Division supported the Bill. All other submissions suggested amendments to the Bill, particularly in relation to clauses 4, 5, 12 and 13. The discussion below addresses the following key issues that were raised in submissions:

- Reduction of advertising requirement for notice of intention to make water extraction licence decisions (cl 5)
- Reduction in requirements for notifying occupiers of land adjacent to that which the notice relates to (cl 5)
- Membership of Drillers' Qualifications Advisory Committee (cl 12)
- Renewal applications for water extraction licences (cl 13)

Clause 5 – Section 71B amended (Notice of intention to make water extraction licence decision)

Clause 5, proposed section 71B(2)

3.2 Proposed s71B(2) removes the mandatory requirement to circulate a notice in a Territory wide newspaper and instead requires that the notice only be published in the general locality to which the notice relates.

3.3 All submitters except for the Minerals Council of Australia (MCA) expressed concerns that reducing the extent to which notices are circulated could limit the public's access to licence application notices, reduce transparency, and limit effective public participation in the decision-making process.⁶ Conversely, the MCA considered that limiting circulation of notices to a newspaper in the general locality would improve procedural efficiencies and contribute to a reduction in costs and timelines.⁷

3.4 The majority of submitters also considered that the public should be given access to more comprehensive information about applications and water extraction licence decisions and recommended the insertion of an additional amendment to proposed s71B providing for notices:

- To be published on the Department of Environment and Natural Resources Water Licensing Portal;⁸
- To provide more comprehensive information than is included at present.⁹

⁶ Submission 2 – Heidi Jennings, p. 2; Submission 3 – Environmental Defenders Office NT (EDONT), p. 1; Submission 4 – Protect NT, p. 1; Submission 5 – Lock the Gate Alliance, p. 1.

⁷ Submission 1 – Minerals Council of Australia NT Division, p. 2.

⁸ Submission 2 – Heidi Jennings, p. 2; Submission 3 – EDONT, p. 1; Submission 4 – Protect NT, p. 1; Submission 5 – Lock the Gate Alliance, p. 1.

⁹ Submission 2 – Heidi Jennings, p. 2; Submission 3 – EDONT, p. 1; Submission 4 – Protect NT, p. 1; Submission 5 – Lock the Gate Alliance, p. 1.

- 3.5 Although three submitters objected to the removal of the requirement to publish notices in a Territory wide newspaper, EDONT considered this to be acceptable provided an alternative approach is required, such as publication on a suitable government website.¹⁰ EDONT further commented that the information currently required to be published in the notice is not sufficient to enable the public to make informed comment and recommended that an additional amendment be included to provide for the publication of the application for a water extraction licence, together with any supporting documentation, on an appropriate government website.¹¹ EDONT noted that the notices are already published on the Department of Environment and Natural Resources Water Licensing Portal but considers that this should be embedded in legislation 'to ensure that this important participatory right is given the force of law and is protected from arbitrary policy changes in the future'.¹²
- 3.6 The Committee sought clarification from the Minister regarding the effect on the operation of the Bill of amending proposed s71B(2) to require that water extraction licence decision notices and the licence application, together with supporting documentation, be made available on an appropriate government website. In relation to making copies of the licence application and supporting documents publicly available, the Minister advised that:

The Bill is drafted comprising a collection of miscellaneous and minor changes to address technical irregularities and administrative inefficiencies that have been identified in the administration of the *Water Act 1992* and Regulations. The Bill is not directed toward policy changes. Consequently policy changes such as making copies of applications and supporting information publicly available has not been contemplated in this Bill.¹³

- 3.7 The Minister further noted that:

this government is broadly committed to increasing transparency in decision-making and will consider the proposal to make copies of the application and supporting information available on a public web site under the government's broader water regulatory reform program, which was signalled by my release of the Water Regulatory Reform Directions Paper on 19 October 2018 with submissions closing on 31 March 2019.¹⁴

Committee's Comments

- 3.8 The Committee considers that requiring publication of a notice of intention to make a water extraction licence decision on an appropriate government website would be an effective means of facilitating access to the public and would largely counter any loss of accessibility arising from removing the requirement to circulate the notice in a Territory wide newspaper. The Committee notes that as this would simply replace one form of advertising with another it does not represent a policy change and would result in a more transparent process.

¹⁰ Submission 3 – EDONT, p. 1.

¹¹ Submission 3 – EDONT, pp. 1-2.

¹² Submission 3 – EDONT, p. 1.

¹³ The Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, *Responses to Written Questions*, p. 1, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

¹⁴ The Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, *Responses to Written Questions*, p. 1-2, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

- 3.9 The Committee notes that while the Department makes copies of water licence applications available in their offices in Katherine, Darwin and Alice Springs it is not always possible for people living in remote areas to travel to urban centres in order to access these hard copies. However, the Committee is satisfied with the Minister's advice that the proposal to make copies of water licence applications and supporting information available on a public web site will be considered under the government's broader water regulatory reform program.

Recommendation 2

That proposed section 71B(2) be amended to include a requirement that the notice of intention to make a water extraction licence decision be published on an appropriate government website.

Clause 5, proposed section 71B(6) and (7)

- 3.10 Proposed s71B(6) removes the requirement to give a copy of the notice of intention to make a water extraction licence decision to occupiers of land immediately adjacent to the land from which water will be taken and the land on which the water will be used. Proposed s71B(7) inserts a new requirement that the Controller must make 'reasonable efforts' to identify occupiers of these lands and provide identified occupiers with a copy of the notice.
- 3.11 Protect NT considered that notification to occupiers of adjacent land should continue to be a mandated requirement. They commented that requiring the Controller to use "reasonable efforts" to identify any occupiers of the adjacent land 'is too subjective' and requested that 'Section 71B(6) remain unchanged and the proposed Section 71B(7) not be inserted'.¹⁵
- 3.12 The Committee sought clarification from the Minister regarding the rationale for the amendments to sections 71B(6) and (7) and was advised that:

Providing a notice to occupiers of land is problematic as, unlike owners, they are not easily identified. For example, the tenants of a rural property where the lease is not registered on the land title.

As you will be aware, there is no rural mail service available which would facilitate delivery of such notifications. Therefore, it is not possible to simply address a letter to a rural address and expect it to arrive, as would be possible in a suburban setting.

The time taken to attempt to identify occupiers adds significantly to processing times, without adding value. Where occupiers are obvious, such as through information available on the lands titles system, they will continue to be formally notified and the other broad public notification processes which currently exist in Part 6A will continue to apply.

The Bill is designed to create an efficiency improvement by reducing the burden of identifying occupiers to "reasonable efforts". "Reasonable efforts" to identify occupiers will be a satisfactory test to replace the mandatory requirement to notify all occupiers. This will also improve administrative efficiencies by reducing

¹⁵ Submission 4 – Protect NT Inc, p. 1

wasted effort, particularly in light of the fact that the mandatory requirement to notify all land owners will continue to apply.

This will also reduce the significant daily volume of “return to sender” mail to the department, associated with failed attempts to reach occupiers.

Committee’s Comments

- 3.13 The Committee notes that while the NT Land Information System may also be used to identify the street addresses of any relevant occupiers, the absence of a rural mail service means that this does not guarantee delivery in rural areas, from which the majority of licence applications originate. Consequently, the “reasonable efforts” that can be made to identify occupiers are limited.
- 3.14 The Committee acknowledges Protect NT’s concerns regarding the subjectivity of the term “reasonable efforts” but is satisfied with the Minister’s advice that “reasonable efforts” provides a satisfactory test under these circumstances. The Committee notes that dissemination of notices to occupiers could be improved by requesting owners of adjacent land to inform relevant tenants of any notifications they receive with regard to licence applications.

Recommendation 3

That the Department of Environment and Natural Resources amend their standard operating procedures to provide that letters of notification to owners include a request that the owner notify any tenants of the licence application.

Clause 12 – Regulations 12 and 13 replaced

- 3.15 Proposed Regulation 13 reduces the prescriptive nature of the membership of the Drillers’ Qualifications Advisory Committee (DQAC) with a view to ensuring that the Committee as a whole has the required skills rather than requiring each category of membership to have specific skills and experience.¹⁶
- 3.16 Protect NT commented that ‘proposed amended Regulation 13 is confusing with its Regulation 13(2) contradicting Regulation 13(3)’.¹⁷
- 3.17 Regulation 13(2) provides that:
- A person is qualified to be appointed as a member if the Minister is satisfied the person has skills, knowledge and experience in one or more of the following areas:
- (a) Hydrogeology
 - (b) Groundwater engineering;
 - (c) Planning and conduct of drilling operations.

Regulation 13(3) requires that:

¹⁶ Explanatory Statement, *Water Legislation Miscellaneous Amendments Bill 2019, (Serial 81)*, p. 1, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

¹⁷ Submission 4 – Protect NT Inc, p. 1

At least 2 of the members must be representatives of users of drilling services and be persons who, in the Minister's opinion, are not involved in the drilling industry or employed in the public sector.¹⁸

3.18 Regulation 13(3) provides for the appointment of two users of drilling services (community members) but when read in conjunction with Regulation 13(2) it is unclear whether the criteria set out in Regulation 13(2) also applies to the community members specified in Regulation 13(3).

3.19 The Committee understands that the intent of the Regulation is for six members of the Committee to be technically based (Regulation 13(2)) and for the remaining two members to be representatives of users of drilling services (i.e. community members), as set out in Regulation 13(3). No technical skills should be required for members specified in Regulation 13(3).¹⁹

Committee's Comments

3.20 The Committee considers that Regulation 13 should be amended to make it clear that community members do not require technical qualifications.

Recommendation 4

That Regulation 13 be re-drafted to make it clear that the criteria set out in Regulation 13(2) only applies to six of the eight members of the Drillers' Qualifications Advisory Committee and does not apply to the 'users of drilling services' identified in Regulation 13(3).

Clause 13 – Regulation 15 amended (Renewal of permits and licences)

3.21 This amendment requires renewal applications for water extraction licences to be submitted not less than six months before the expiry date, compared to the current Regulation which requires lodgement not later than 1 month before the expiry date.

3.22 The EDONT stated that it had no objections to the extension of the period within which a renewal application for a licence can be made but requested clarification as to whether water extraction licence renewal applications are subject to Part 6A of the *Water Act 1992*. They drew attention to the risks associated with over-allocation, particularly in a future context of climate change, increasing environmental stress and competing water uses and commented that:

it is essential the proposed renewal of water extraction licences are subject to the same levels of transparency and accountability as new licence applications, especially as they are generally granted for 10 year terms.²⁰

¹⁸ Water Legislation Miscellaneous Amendment Bill 2019 (Serial 81), p. 5.

¹⁹ Department of Environment and Natural Resources, E-mail communication, 27 May 2019, unpublished

²⁰ Submission 2 – EDONT, p. 3.

- 3.23 The EDONT recommended that if water extraction licence renewal applications are not subject to Part 6A of the Act, an amendment to this effect be included in the Bill under clause 15 of the Regulations.²¹
- 3.24 The Committee sought clarification from the Minister regarding the conditions under which a water extraction licence renewal application would be subject to Part 6A of the *Water Act 1992* and was advised that:

I can confirm that applications to renew a water extraction licence are not subject to Part 6A of the *Water Act 1992*.

In practice, if a licence holder wants to renew a licence and increase the licensed volume of water at the same time, they would be required to submit two separate applications which would be processed independently. An application for an increase in water volume, unless it is as a result of a trade or subdivision, would be subject to Part 6A.²²

Committee's Comments

- 3.25 The Committee notes that water extraction licences are granted for up to 10 years and the purpose of this amendment is to make the renewal period proportionate to this length of time and to allow sufficient time for renewal processing.²³ While the Committee acknowledges the EDONT's concerns it considers that the mechanisms currently in place to monitor water allocation are sufficient and that no benefit would accrue from requiring renewal licences that do not involve an increase in the volume of water to be subject to Part 6A.

²¹ Submission 2 – EDONT, pp. 2-3.

²² The Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, *Responses to Written Questions*, p. 1, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

²³ Hon Eva Lawler MLA, Minister for Environment and Natural Resources, Draft Daily Hansard – Day 2 – 13 March 2019 <http://hdl.handle.net/10070/306549>.

Appendix A: Submissions Received

Submissions Received

1. Minerals Council of Australia NT Division
2. Heidi Jennings
3. Environmental Defenders Office NT
4. Protect NT Inc
5. Lock the Gate Alliance

Note: Copies of submissions and tabled papers are available at:
<https://parliament.nt.gov.au/committees/EPSC/81-2019>

Bibliography

Explanatory Statement, Water Legislation Miscellaneous Amendments Bill 2019, (Serial 81), <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

Hon Eva Lawler MLA, Minister for Environment and Natural Resources, Draft Daily Hansard – Day 2 – 13 March 2019 <http://hdl.handle.net/10070/306549>.

Hon. Eva Lawler MLA, Minister for Environment and Natural Resources, *Responses to Written Questions*, p. 1-2, <https://parliament.nt.gov.au/committees/EPSC/81-2019>.

Water Act 1992 (NT)

Water Regulations 1992 (NT)