

From: [Jimmy Cocking](#)
To: [Julia Knight](#)
Subject: SPSC - Environment Protection Bill Submission
Date: Friday, 14 June 2019 4:28:25 PM

Dear SPSC members,

The Environment Protection Bill is an important step forward for environmental protection

We are concerned about industry efforts to prevent, delay or weaken the new legislation, and encourage the committee to ensure that the legislation passed by parliament reflects the NT Government's commitment to deliver a modern, fair and effective environmental protection framework. This means ensuring balanced representation of interests so that economic and business imperatives are not used as a justification to weaken best practice environmental assessment.

The Bill needs to be amended to incorporate all the relevant recommendations from the Final Report from the Fracking Inquiry so that they apply to all activities.

Last year, the NT Government committed to implement all 135 recommendations of the Scientific Inquiry into Hydraulic Fracking in the Northern Territory. While the Bill in some respects is consistent with some of the Inquiry's recommendations (such as the inclusion of a 'fit and proper person' test, ESD as a mandatory relevant consideration, strong compliance/enforcement provisions), there are several key recommendations that are not yet implemented by the current Bill.

The environmental safeguards that apply to petroleum activities must also apply to activities that pose an equal or greater level of risk. Creating separate scales of regulation introduces significant uncertainty and risk.

The following recommendations must be incorporated in the Environment Protection Bill to ensure implementation throughout the entire process of environmental assessment and compliance.

These recommendations are necessary to hold industry to a consistent level of accountability:

- Unrestricted open standing rights for judicial review (recommendation 14.23)
- Third party merits appeal rights (recommendation 14.24) – also an election commitment
- Civil enforcement proceedings for third parties (recommendation 14.31)
- Explicit requirement to consider cumulative impacts (recommendations 14.19 and 14.21)
- Chain of responsibility rules to hold companies and directors to account (recommendation 14.3)
- Burden of proof should be with the proponent for certain types of environmental harm.

The Bill should be amended to ensure climate change is a mandatory factor for decision makers to consider when assessing proposals under the Act.

The Bill should be amended to ensure appropriate consideration of climate impacts by including an emphasis on climate change in the objects of the Act. It is critical that decision makers are guided under the Act to evaluate the impact of a proposal on the climate as well as the impact of climate change on the proposal. This will give greater weight to ESD by acknowledging the interests of future generations when making a

decision on a project with climate change implications.

Climate change is one of our greatest environmental challenges – a modern system of environmental assessment must therefore guide decisions on the issue of climate change. Climate change is already causing environmental challenges for the Northern Territory which is particularly vulnerable to climate projections. The major industries of the NT are likely to be severely affected so it is important that the environmental framework allows decision makers to consider and apply principles of climate change adaptation and mitigation when assessing a proposal.

The Bill should be amended to provide for open standing for judicial review and include merits review rights.

The NT Government's policy reversal on community appeal rights last year will increase the risk of corruption, reduce accountability and place important environmental values at risk. Communities potentially impacted by a proposal should have a genuine ability to engage in the decisions about that proposal to ensure development occurs when it is appropriate for that region.

To promote effective implementation of the new laws, parliament should restore third party merits review rights and open standing for judicial review in the Environment Protection Bill 2019. This would be consistent with the recommendations of the Fracking Inquiry – it makes no sense to have different appeal rights for different industries/activities. The test should be the whether the action will impact the environment rather than specific to a particular industry.

The Bill should be amended to ensure that the Minister can only approve a project if there has been adequate engagement with impacted communities.

The Bill has been significantly strengthened by including an acknowledgement of Aboriginal people in the objects and requiring a proponent to consider the rights and interests of Aboriginal people during environmental assessment (section 43).

Notwithstanding this strength, the Bill could be improved by outlining a process for proponents to demonstrate they have undertaken appropriate consultation and engagement. There needs to be a clear test to ensure that approval will not be granted unless affected communities are adequately engaged in the assessment process and appreciate the full range of risks and benefits.

A key amendment to the Bill should therefore be to include a list of mandatory requirements, including consultation with affected communities, that the Minister must be satisfied of before granting an approval. This should be added to section 73 of the Bill.

The Bill should ensure all projects are transitioned in a timely and consistent manner into the new framework.

Not all projects will be immediately subject to the new act when it comes into power. The Act will apply at different times depending on the type of activity that is being assessed.

Mining projects that have already been assessed will not be subject to the new Act for up to three years following the date of commencement. Petroleum however will be subject to the Act immediately following commencement.

This is a serious inconsistency and poor administrative practice. It will lead to different standards of protection that increases environmental risk. The level of environmental risk should determine the level of regulation, not the industry or activity type.

Different transitional arrangements leads to a perverse outcome as not all activities will require an environmental approval despite having an equal or greater impact on the environment.

There needs to be a commitment from government to properly fund monitoring, compliance and enforcement.

It is essential that adequate resources are allocated in the NT budget for implementation of the new laws, including environmental assessment, public consultation, monitoring, compliance and enforcement. One of the most significant and widely held concerns resulting from consultation was the need for an increased level of funding to properly administer the new regulatory framework. Without ensuring there is adequate agency capacity to implement the reforms, the Act is at a risk of being largely symbolic.

Kind regards

Jimmy Cocking