

**Protect NT Incorporated's Submission to the Social Policy Scrutiny Committee on the
Environment Protection Bill 2019**

Dear Social Policy Scrutiny Committee,

This is Protect NT Inc's submission of comments regarding the Bill to establish the Environment Protection Act 2019. Protect NT Inc has over 400 members and we are dedicated to protecting the Northern Territory's water, land, climate and lifestyle.

Part 1 Introduction

Division 1 Preliminary matters

Clause 3, Objects. Firstly, we welcome the Objects, with one exception. Clause 3 fails to address climate change and greenhouse gas emission reductions in the Objects. Climate change, reducing the NT's greenhouse gas emissions, and implementing measures to draw down atmospheric greenhouse gases must be included in Clause 3, as the Objects dictate the scope and interpretation of the Bill/Act (including section 73 Matters to be considered by Minister in deciding on environmental approval).

Clause 4 Definitions. The definition of "ecologically sustainable development" (Clauses 3(b) and 4) must go further than just maintaining processes. For example, Australia's National Strategy for Ecologically Sustainable Development (1992) defines ecologically sustainable development as: "using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased".

Part 2 Principles of environment protection and management

Division 1 Principles of ecologically sustainable development

Clause 17(3) "In making a decision under this Act and stating the reasons for that decision, a decision-maker is not required to specify how the decision-maker has considered or applied these principles", is unacceptable. We expect to see how the principals of ESD have been applied in the decision making process.

Clause 18(2) "Decision-making processes *should* provide for community involvement in relation to decisions and actions that affect the community", needs to be strengthened to state that community involvement *must* be provided for, not "should".

Clause 24(2) "Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement", they must (not should) bear these costs plus the cost of full rehabilitation (not just abatement).

Clause 24(4) "Established environmental goals should be pursued *in the most cost-effective way* by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems", while cost-effectiveness might be a consideration, it can not be an excuse or reason to allow any environmental harm or degradation. We request that the words "in the most cost-effective way" be deleted.

Part 3 Environment protection declarations

Division 2 Protected environmental areas and prohibited actions

While we welcome Clause 35, Temporary declaration of protected environmental area, we object to Clause 35(3), “A temporary declaration must not be made in respect of an area within 3 months after the day on which a previous temporary declaration affecting that area expires, unless it relates to a different matter”. We request 35(3) be removed as we can envision several scenarios where 35(3) could lead to environmental harm.

Part 4 Environmental impact assessment process

Division 1 Purpose of environmental impact assessment process

Clause 43, General duty of proponents. While “A proponent of an action has the following general duties under an environmental impact assessment process”, they must demonstrate how they meet these duties. Protect NT Inc encourages and applauds genuine community consultation, but regularly receive feed back from members that they have been excluded from consultation processes. The EPA Act 2019 must describe and enforce genuine consultation with all impacted and interested parties. This must also be included in decision making under section 73.

Part 5 Environmental approvals

Division 3 Decision of Minister on environmental approval

Clause 73, Matters to be considered by Minister in deciding on environmental approval. This section must include the consideration of climate impacts and green house gas emissions. It must also include proof of genuine community consultation.

Part 6 Environmental offsets

Clauses 125 and 126 raise serious concerns for us. Much controversy surrounds the concept that environmental harm in one area can be offset by conservation or remedial work in another area. Offsets must not be used to make unacceptable developments acceptable.

Part 7 Financial provisions

Division 1 Environment protection bonds.

We applaud this Division and sincerely hope that the bond amounts are not underestimated as has occurred in the past (eg Rum Jungle, etc). The bonds must reflect the true total cost of remediation and rehabilitation long into the future and at increased future rates of cost.

Division 2 Environment protection levy, while we have not seen how this levy will be calculated, we welcome it also.

We also support Division 3 Environment protection funds.

Part 12 Review of decisions

We were expecting to see a section detailing merits review included in this Part, as promised by the Pepper Inquiry recommendations. We hope the merits review omission from this Bill is just an oversight and it will be included in the Act.

Listed below are the Recommendations made in the Pepper Inquiry's Final Report which still need to be included in the EPA Act 2019. The page numbers refer to the Pepper Inquiry's Final Report)

Recommendation 14.21

That as part of the environmental assessment and approval process for all exploration and production approvals, the Minister be required to consider the cumulative impacts of any proposed onshore shale gas activity. (p.418)

Recommendation 14.24

That prior to the granting of any further production approvals, merits review be available in relation to decisions under the Petroleum Act and Petroleum Environment Regulations including, but not limited to, decisions made in relation to the granting of all EMPs.

That, at a minimum, the following third parties have standing to seek merits review:

- proponents (that is, gas companies) seeking a permit, approval, application, licence or permission to engage in onshore shale gas activity;
 - persons who are directly or indirectly affected by the decision;
 - members of an organised environmental, community or industry group;
 - Aboriginal Land Councils;
 - Registered Native Title Prescribed Body Corporate and registered claimants under the Native Title Act;
 - local government bodies; and
 - persons who have made a genuine and valid objection during any assessment or approval process.
- That an independent body, such as NTCAT, be given jurisdiction to hear merits review proceedings in relation to any onshore shale gas industry. (p.421)

Recommendation 14.23

That prior to the grant of any further exploration approvals, the Petroleum Act and Petroleum Environment Regulations be amended to allow open standing to challenge administrative decisions made under these enactments. (p.419)

Recommendation 14.24

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 - local government bodies; and
 - persons who have made a genuine and valid objection during any assessment or approval process.
- That an independent body, such as NTCAT, be given jurisdiction to hear merits review proceedings in relation to any onshore shale gas industry. (p.421)

Recommendation 14.25

That prior to any further production approvals being granted, where litigation is brought genuinely in the public interest, costs rules be amended to allow NT courts to not make an order for the payment of costs against an unsuccessful public interest litigant. (p.422)

Recommendation 14.31

That prior to the grant of any further production approvals, the Government allows civil enforcement proceedings to be instituted to enforce potential or actual non-compliance with any legislation governing any onshore shale gas industry. (p.427)

Recommendation 14.32

That prior to the grant of any further production approvals, the Government enacts provisions that reverse the onus of proof or create rebuttable presumptions for pollution and environmental harm offences for all onshore shale gas activities. (p.428)

Thank you for this opportunity to comment on the Environment Protection Bill 2019. We look forward to the commencement of the Act with these amendments in the near future.

Yours Sincerely,

Pauline Cass

For Protect NT Incorporated