Submission - Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)

To the Legislative Scrutiny Committee, Legislative Assembly of the Northern Territory;

I write as a local resident who has maintained an interest in matters touched by this Bill over many years. I follow environmental regulation in the Northern Territory closely enough to have spent time inside these particular instruments, and this submission is an account of what I found when I tried to use them - first when I tried to obtain air quality data, and then when I tried to work out what licence and fee the Bill was actually creating.

I take no position on whether monitoring schemes should be established, or on how much the licence fees should be. Both seem to me matters for the Assembly. My concern is narrower: what this Bill requires, what it leaves optional, and whether a person outside government can follow it.

1. I tried to get the air quality data (it cost $1,200)

The Northern Territory Environment Protection Authority's *Darwin Airshed LNG Licence Review* records that continuous monitoring data collected around Darwin "is not publicly available", and that making it public "would improve transparency". Recommendation 11 says the licensees should be made to give that data "to the public in real time". Recommendation 15 says information the public is interested in should be "made available by licensees and can be shared by the regulator". That is the regulator's own view of what the public is owed, and I agree with it.

Relying on those statements, I applied under the Information Act 2002 for the continuous ambient BTEX monitoring data for the Darwin airshed. My application quoted the review. In response I received a fees estimate of $1,200, with a $600 deposit payable before processing would begin.

The estimate may well be correct under the Information Act. I am not disputing it. But it is the practical answer, today, to the question of whether air quality monitoring data in this Territory is available to the public. The regulator says it should be available: getting it costs twelve hundred dollars and starts with a deposit.

This Bill is the Assembly's opportunity to change that, and I am disappointed to find it not taken.

I read Part 6A looking for a rule that would make the readings public, and I could not find one. Reporting comes up twice. Paragraph (g) is about the money: it lets regulations create a fund and require someone to keep track of what goes in and out of it. Paragraph (h) lets regulations impose "*compliance, enforcement and reporting requirements in relation to the scheme*" - that could cover the readings, though it does not say so. Both are things regulations <u>may</u> do. Neither requires anything, and neither mentions the public. So there are two places the Bill could have required the readings to be published, and it uses neither.

The Explanatory Statement led me to expect otherwise. It says that paragraph "is to ensure the scheme is transparent and accountable". Reading the paragraph, I do not think it does. It is about the fund, and it does not require even that much - it says regulations <u>may</u> do it.

None of this would be hard. In New South Wales, where a licence carries a monitoring condition, the holder has a fortnight from getting the data to put the pollution readings and its own name on its website. If it does not run a website for that business, it has to give a copy to anyone who asks, at no charge. Failing to do it carries a penalty of up to $20,000 for a company. The company does the publishing, so none of it is paid for out of the public purse.

I do not see why a Territorian should have to pay twelve hundred dollars for what a person in Sydney can simply look up for free.

There is also a gap worth naming. The Territory's ambient network reports against the National Environment Protection (Ambient Air Quality) Measure, which covers criteria pollutants. The words "benzene" and "air toxics" do not appear in the Territory's 2023 compliance report under that Measure. The pollutants the airshed review is concerned with are not measured by the network that reports nationally. This is precisely the gap a monitoring scheme could fill, if it were required to fill it, and required to publish what it found.

2. I tried to follow the licence and the fee, and could not (until I could)

This is an account of being confused, and of what I found when I worked out why. I set it out that way because the confusion is the point.

At first I could not find the licence at all. Parts 3 and 4 of the Bill create an annual fee for the Blacktip onshore gas plant. I went to the Waste Management and Pollution Control Act to find the licence the fee attaches to. Schedule 2, Part 2 ends at item 5. There is no item 6. I then went to regulation 3B of the Administration Regulations to find the fee. It sets fees for items 1, 2, 3 and 5. There is no fee for item 6. At that point my honest conclusion was that the Bill was creating a fee for a licence that did not exist.

Then I found what I had missed. The licence does exist. Section 8(2) of the Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005 (a project-specific Act I had no reason to open) provides that the Waste Management and Pollution Control Act has effect "*as if*" a sixth item had been inserted in that Schedule. The words have full legal force. This Bill does the same thing again one level down: clause 7 inserts into the 2005 Act a provision that the Regulations have effect "*as if*" a regulation 3B(6) had been inserted in them.

I want to be fair to the drafter about this, because my first reaction was wrong. The Bill is not silent about it. Clauses 9 and 11(2) insert notes into the Act and the Regulations pointing to the 2005 Act. A reader who notices the notes will find their way.

What still troubles me is this: to find out what this facility is licensed to do, and the rate its fee is set at, a reader has to hold three instruments open at once. The 2005 Act does the work - it deems the activity into the Waste Management and Pollution Control Act, and clause 7 will have it deem the fee into the Administration Regulations as well. The Act and the Regulations are where a reader looks, but neither contains the operative words. Each will carry a note pointing back to the 2005 Act. Nothing about that is unlawful or concealed. It is simply harder to follow than it needs to be, and harder to keep current, and the Bill is itself evidence of the difficulty: a fee is being prescribed now for a licence created twenty-one years ago.

Two things follow that I would ask the Committee to test rather than take from me.

Was the indirection necessary? I do not think it was. Regulation 3B could have referred directly to item 6, which is legally operative wherever its words physically sit. Matching the deeming looks like a choice about symmetry rather than a legal requirement. If so, the simpler course was available.

Why is this item bespoke at all? Reading the two items side by side answers it. The general item is written around a product: it covers premises processing hydrocarbons "*so as to produce, store and/or despatch liquefied natural gas or methanol*", and it applies only where the premises are "*designed to produce more than 500,000 tonnes annually*" of those products and where "*no lease, licence or permit under the Petroleum Act 1984 or the Petroleum (Submerged lands) Act 1981 relates to the land on which the premises are situated*". A gas plant that makes something other than liquefied natural gas or methanol falls outside that item however large it is, because it fails the product test before the size test is reached. The item deemed in beside it is written around a name instead, and carries no test of any kind.

So the bespoke item is not an oddity; it is what you need if the general class does not reach the plant. That is the part worth the Committee's attention. The choice made in 2005, and left in place by this Bill, was to name one facility in a project Act rather than to widen the general class on stated criteria. Naming works, and it leaves the licensing requirement for that plant sitting in an Act nobody would think to open. Widening the class would have covered this plant and any other like it, in the Schedule where a reader looks.

The Explanatory Statement did not help me through any of this. All it says of clause 7 is that it "has the effect of applying the annual fee for a licence to conduct an activity to the Blacktip hydrocarbon processing facility". Reading that, I would not have known the fee text was going to sit in a project Act from 2005 rather than in the Regulations, or that the amount would depend on an estimate made by the NT EPA. Both are things I had to work out from the clauses.

3. Almost nothing in Part 6A is required

Proposed Part 6A goes into the Environment Protection Act 2019. This is a different Act from the one the licence and the fee live in, which is worth keeping in view, because the Bill amends both. It doesn’t set up a monitoring scheme: it lets the Government set one up later, by regulation, if it decides to. Section 126B(1) says the Regulations <u>may</u> establish monitoring schemes. Every paragraph of section 126B(2) is an optional head of regulation-making power. I expected the Bill to say when the first scheme would start and what basic checks would apply to it. I could not find either.

I accept that an enabling provision is meant to be broad, and I am not suggesting the drafting is incoherent. I know too that a short title is a label, not a promise. But a member of the public who reads that a Bill is called Safe Air, and then reads Part 6A, is entitled to notice that nothing in it requires any air to be monitored. I ask the Committee whether that is what the Assembly means to enact.

Three things I expected to find and didn't, each of which regulations <u>could</u> supply and none of which they have to:

I expected to find some minimum standard for the monitoring itself, and there is none. Nothing requires a scheme to use an accepted method, or to meet the national air quality standards, or to be done by anyone qualified. That is not because the idea would be foreign here: the Act this Part is being added to already works with accredited analysts elsewhere, and already lets a regulation say what accreditation means. The machinery exists. This Part simply does not reach for it.

I also could not find anything that makes a scheme's own numbers public, or that guarantees anyone a way to have them looked at again. I should be careful here, because there is something. A court can be asked whether a decision was lawfully made, and regulations are allowed to set up a review of their own. What is missing is any requirement that they do.

The Waste Management and Pollution Control Act (the one I had just spent all that time in) shows how it is done, and it took two steps. That Act allows decisions of a prescribed kind to be made reviewable; a regulation then named which ones, and that is how the tonnage figure behind the licence fee became something the licensee can contest. Nothing prevents the same two steps being taken for Part 6A. The Bill simply does not require either of them. So whether the figure that settles what a scheme can spend is ever published, or ever able to be questioned by the people paying for it, is left to a regulation nobody is obliged to make.

Then there is the question of who pays. Section 126B(2)(e) permits regulations to require "specified persons or classes of persons" to contribute. It says nothing about those persons having caused, or being anywhere near, whatever the scheme is measuring. The Explanatory Statement does: it says the paragraph "will allow for the industries or sectors engaging in actions that may have impacts on the environment to be required to contribute". That is the polluter-pays principle, and it is welcome.

I assumed at first that the principle must be doing the work somewhere, and it is in the Act. The Act says that persons who generate pollution and waste should bear the cost of containment, avoidance and abatement. But it puts that duty on the Minister, the Chief Executive Officer and the NT EPA, when they make decisions. The persons who will actually have to contribute are named in regulations, and regulations are not made by any of those three. The principle is in the Act and does not reach the decision that settles who pays.

There is a second gap in the same place. The principle speaks of the cost of containment, avoidance and abatement. Measuring pollution is none of those three. So even where the principle does apply, it is not obvious that it reaches the cost of monitoring at all.

A regulation that charged the wrong people would be challenged soon enough, so that is not what worries me. The trouble is that the only place this idea is stated plainly about this scheme is the Explanatory Statement, which binds nobody. A cost that is not fixed on the polluter has to fall somewhere else.

I would also draw attention to two words in paragraph (e). Contributions may be required towards "*costs or anticipated costs*". The Explanatory Statement calls this a clarification, "for example, the purchase of new monitoring equipment". That much is accurate, and it is what worries me: money can be collected for monitoring before any monitoring has been done. I'm not concerned on the polluter's behalf - they can look after themselves. But if money is collected up front, somebody should have to say later how much came in and where it went. The Bill does not require that anywhere, and it does not require a scheme to be set up at all. So money can be taken for something nobody has to build, and nobody has to account for it afterwards.

4. The scheme administrator need not be a public authority

Regulations may appoint "*one or more persons*" as scheme administrator and confer functions and powers on them. The Explanatory Statement says it is "anticipated that generally the administrator of an environmental monitoring scheme will be one more government Departments [sic], but this provision allows for flexibility as required".

I do not read that as a promise, and I am not going to pretend it is one. It says "anticipated" and "generally", and it says in the same breath that the provision allows flexibility. So I am not complaining about the statement here: I am worried about what the clause itself allows. On its face any person may be appointed - including, so far as the words go, someone connected to a business the scheme is measuring. Unspecified functions and powers may be conferred, with no independence or conflict-of-interest requirement anywhere in Part 6A.

I am not predicting misuse. I am saying that if the intention really is that departments will generally run these schemes, there is no reason not to say so in the Bill, and if it is not, the Assembly should know that before it votes.

The Territory already has a body set up for this kind of role, and the Bill does not use it. The NT EPA is independent of the Minister by law, its appointed members cannot be public servants, and it is already under a statutory duty to keep its processes transparent. In this Bill it appears once, to work out a tonnage for a fee. In the Explanatory Statement it does not appear at all.

That is not an argument for making the NT EPA run schemes; it has no staff of its own. It is an argument for separating the running of a scheme from custody of what the scheme produces, and for putting the second with a body that already has to be open about what it does.

5. The fee provisions, and what the Explanatory Statement says about them

Two observations, offered as questions rather than defects.

The determination. Both the amended regulation 3B(5) and the new deemed regulation 3B(6) fix the fee by reference to the tonnes of hydrocarbons the NT EPA determines, "having regard to the design" of the plant, are likely to be handled in a 12-month period. That is a forward estimate made by the regulator.

There is a way to challenge it, and I want to be fair about that. The Regulations do make this kind of determination reviewable. But the review belongs to the person the decision is about - the licensee - and the clock starts when they are given notice of it. Nobody else is told, so nobody else could use it even if they were entitled to. The fee itself ends up on the licence, and anyone may inspect a licence, so the amount is findable. The estimate behind it is not.

Licensees already have a way to contest their bills; I am not asking for another. I am asking why a figure that sets what a licensed facility owes the public is not published, and why the only party allowed to question it is the one that benefits if it comes in low.

I support updating the fee. A per-tonne rate of a tenth of a cent per tonne was well overdue for attention, and the Assembly may well think the new figure modest. The Explanatory Statement says of clause 11: "This clause amends the annual fee amount. Revenue units are used to ensure the fee is adjusted for inflation" - accounting for the unit, and not the number.

What has been left behind is more the point. Within the same regulation, the variable components for items 1 to 3 remain fixed dollar amounts and are not converted - $0.0575 for each person served above a thousand in item 1, and $0.0575 per tonne or kilolitre in items 2 and 3. So the same thing that happened to item 5 will now happen to them: the amount a licensed facility contributes will fall in real terms every year until some future Bill happens to notice.

That is the part I would press. A fee that shrinks to almost nothing and then sits there until Parliament happens to notice is a fee system that does not look after itself. A fee that is not maintained is a smaller contribution from the facilities being licensed, year after year, without anyone deciding so. The Explanatory Statement's silence about the size of this correction matters because it is the same habit that let the erosion run: nobody was told. If revenue units are the right answer for item 5, I cannot see the argument for leaving items 1 to 3 to erode in the same way, and I would ask the Committee to put that to the Minister.

6. Whether it matters that so little is required

It might be said that all of this is theoretical, since regulations can supply what the Bill leaves out. There is a published record suggesting the question is not theoretical.

In an answer to questions on notice published by the Senate Environment and Communications References Committee dated 4 July 2024, the operator of the Ichthys LNG facility set out the periods during which its two acid gas incinerators were offline. On those figures both units were offline simultaneously for somewhere between 777 and 924 of the 2,012 days from 1 January 2019 to the date of that answer. That's between roughly 39 and 46 per cent of the period, the range depending on how the outage still running at the date of the answer is counted. This period included one unbroken period of 323 consecutive days. When those units are offline, acid gas is routed to a dedicated hot vent. Over that same period the relevant licence contained no availability requirement, no venting duration limit and no downtime reporting condition. The NT EPA's airshed review recommends creating all three now.

That is what "may" produces over time. It is the reason I would ask the Committee to convert two of the Bill's permissions into requirements: a first scheme actually running by a date, and publication of what schemes produce.

Recommendations

These fall into three groups. The first is what I think the Bill should be made to require; the second is what should be made public; the third is about the fee provisions, which are a smaller matter but the one this Bill was most obviously written to fix.

What the Bill should require

1. That the Bill set a deadline for the first scheme to be up and running.
2. That scheme monitoring comply with applicable national environment protection measures and be carried out by people accredited under a standard prescribed by regulation.
3. That the regulations recover the cost of a scheme from those whose activities it monitors. The Explanatory Statement already says that is the intention; putting it in the Bill means it does not depend on a future government still meaning it. I am asking for a duty to charge the polluters, not a limit on who may be charged.
4. That a scheme administrator be a public authority, or else be subject to independence and conflict-of-interest requirements. Custody of the data, and the duty to publish it, should sit with the NT EPA.

What should be made public

5. The readings themselves should be put somewhere an ordinary person can get at them. New South Wales does this by making the licence holder publish its own results, so nobody is

left waiting on a department to act and the public purse pays for none of it. Regularly, at no charge, and in something a home computer can open is the whole of what I am asking for.

6. The tonnage determinations and contribution calculations should be published and remade at a stated interval.

7. The estimate, where contributions are collected for costs not yet incurred, should be published, and reconciled afterwards against what was actually spent, with the money held for the scheme and spent on nothing else. Any surplus should stay in the scheme and go towards more monitoring, rather than back to the people who paid it.

8. Anyone affected by one of these figures should be able to have it questioned - not only the company being billed for it. The time to do so should start when the figure is published, rather than when a letter arrives that nobody else sees.

The fee provisions

9. Convert the remaining fixed-dollar fee components to revenue units - the per-person component for item 1, and the per-tonne or per-kilolitre components for items 2 and 3. This will ensure that what those facilities contribute is maintained rather than left to erode. Items 5 and 6 are dealt with by this Bill; these three are not.

10. Enact the licence item and the fee directly, in Schedule 2 of the Act and in regulation 3B, re-enacting the construction-approval item along with them, so the operative words sit in the instruments a reader would think to open. The 2005 Act will not lapse on its own: only the Assembly can now tidy this up, and it has this Bill open in front of it.

I remain interested in contributing further to improved decision making.

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