



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

Inquiry into the Environment Legislation Amendment (Safe Air) Bill 2026

October 2026



Inquiry into the Environment Legislation Amendment (Safe Air) Bill 2026



Legislative Assembly of the Northern Territory

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Chair's Preface

This report details the Committee's findings regarding its consideration of the Environment Legislation Amendment (Safe Air) Bill 2026 (the Bill). The Bill amends the *Environment Protection Act 2019*, the *Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005*, the *Waste Management and Pollution Control Act 1998* and the *Waste Management and Pollution Control (Administration) Regulations 1998*. The Bill seeks to provide a framework to establish environmental monitoring schemes, apply annual licensing fees to the operation of the Blacktip Yelcherr Gas Plant, and amend the annual licence fees for hydrocarbon facilities so that they are expressed in revenue units instead of dollar amounts.

The Committee received 12 submissions to its inquiry. The Committee also had a public briefing on the Bill from the Department of Lands, Planning and Environment. All submissions supported the broad policy intent of Part 2 of the Bill to enhance air quality in the NT. However, many submitters expressed their preference for the Bill to directly implement an air quality monitoring scheme rather than creating a framework by which an air quality monitoring scheme could later be established by regulations.

Following careful consideration of the Bill and advice from the Department of Lands, Planning and Environment regarding the concerns of stakeholders, the majority of the Committee is of the view that the Assembly should pass the Bill with the proposed amendments as set out in the recommendations.

The Committee's recommendations seek to better align the statutory framework outlined in the Bill with the policy intention as described by the Minister in his first reading speech, the Explanatory Statement, and the Department of Lands, Planning and Environment in evidence to the Committee. In particular, to align the Bill with the policy intent of promoting transparency and public confidence in environmental regulation, the Committee recommends that the Bill be amended to prevent a person from being appointed as a scheme administrator if they are also required to contribute towards the costs of that environmental monitoring scheme. For the same reason, the Committee also recommends that the Bill be amended to provide that the regulations may provide for the manner and form in which environmental monitoring data may be published.

Additionally, to align the Bill with the policy intention that the schemes will be industry-funded, the Committee recommends that the Bill be amended to provide that a person required to contribute towards the costs of an environmental monitoring scheme must have contributed to the environmental quality or environmental or human health impact being monitored. Further, the Committee recommends that the regulations may provide the Minister the power to determine the person or class of persons required to contribute towards the costs of an environmental monitoring scheme.

Finally, the Committee recommends that the Bill provide for an internal review mechanism for persons required to contribute to the costs of an environmental monitoring scheme, including whether they should be required to make contributions towards the costs and whether the contributions were calculated correctly in

accordance with any methods provided by the regulations or determined by the Minister by *Gazette* notice.

On behalf of the Committee, I would like to thank all submitters, and the Department of Lands, Planning and Environment who briefed the Committee on the Bill and provided comprehensive responses to the Committee's questions. I also thank my fellow Committee members for their bipartisan commitment to legislative scrutiny.

A handwritten signature in black ink, appearing to read 'Oly Carlson', with a stylized, flowing script.

Mrs Oly Carlson MLA

Chair

Committee Members

Chair:	Mrs Oly Carlson, MLA Member for Wanguri
Deputy Chair:	Mr Clinton Howe, MLA Member for Drysdale
Members:	Justine Davis, MLA Member for Johnston Mr Dheran Young, MLA Member for Daly Mrs Laurie Zio MLA, Member for Fannie Bay

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Acknowledgments

The Committee acknowledges all those who provided written submissions to its inquiry, and the Department of Lands, Planning and Environment for briefing the Committee and supporting the Committee in their inquiry.

Acronyms and Abbreviations

AQMS	Air Quality Monitoring Scheme
Bill	Environment Legislation Amendment (Safe Air) Bill 2026
Blacktip Act	<i>Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005</i>
Committee	Legislative Scrutiny Committee
Department	Department of Lands, Planning and Environment
EMS	Environmental Monitoring Scheme
EP Act	<i>Environment Protection Act 2019</i>
EPL	Environment Protection Licence
NT	Northern Territory
NTCAT	Northern Territory Civil and Administrative Tribunal
NT EPA	Northern Territory Environment Protection Authority
PM ₁₀	Particulates 10 micrometers or less
PM _{2.5}	Particulates 2.5 micrometers or less
WMPCA Regulations	Waste Management and Pollution Control (Administration) Regulations 1998
WMPC Act	<i>Waste Management and Pollution Control Act 1998</i>

Terms of Reference

Sessional Order 7

Establishment of Legislative Scrutiny Committee

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
 - (a) any bill referred to it by the Assembly;
 - (b) 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 power 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 and Torres Strait Islander 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 a 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.
- (4) The committee will provide an annual report of its activities to the Assembly.

As amended 21 July 2026

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Environment Legislation Amendment (Safe Air) Bill 2026 with the proposed amendments set out in Recommendations 2 to 6.

Recommendation 2

The Committee recommends that Clause 4 of the Bill be amended to prohibit a person from being appointed as a scheme administrator if they are required to make contributions towards that environmental monitoring scheme.

Recommendation 3

The Committee recommends that proposed section 126B(2)(e) be amended to provide that a specified person or class of persons required to make contributions towards an environmental monitoring scheme must have taken or may take an action that impacts the environmental quality or environment or human health being monitored.

Recommendation 4

The Committee recommends that Clause 4 of the Bill be amended to provide a mechanism for specified persons or classes of persons to seek review regarding an environmental monitoring scheme, including whether a person should be required to contribute to costs and the calculation of the amount required to be contributed.

Recommendation 5

The Committee recommends that proposed section 126B(2)(e) be amended to provide that the Regulations may empower the Minister to specify, by *Gazette* notice, the persons or classes of persons to whom the contribution requirements apply.

Recommendation 6

The Committee recommends that proposed section 126B(2) be amended to provide that the Regulations may provide for the manner and form of publishing monitoring data relating to an environmental monitoring scheme.

1 Introduction

Introduction of the Bill

- 1.1 The Environment Legislation Amendment (Safe Air) Bill 2026 (the Bill) was introduced into the Legislative Assembly by the Minister for Lands, Planning and Environment, the Hon Josh Burgoyne MLA, on 26 August 2026. The Assembly subsequently referred the Bill to the Legislative Scrutiny Committee (the Committee) for inquiry and report by 7 October 2026.¹

Conduct of the Inquiry

- 1.2 On 27 August 2026, the Committee called for submissions by 7 September 2026. The call for submissions was advertised via the Legislative Assembly website, Facebook, and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. As set out in Appendix 1, the Committee received 12 submissions to its inquiry.
- 1.3 On 31 August 2026, the Committee held a public briefing (see Appendix 2). The Committee heard from representatives of the Department of Lands, Planning and Environment (the Department). The Committee thanks the Department for their assistance.
- 1.4 The Bill and associated explanatory materials were also forwarded to the Committee's independent legal counsel, Professor Ned Aughterson.

Outcome of Committee's Consideration

- 1.5 Sessional Order 7 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.
- 1.6 Following examination of the Bill, and consideration of the evidence received, the majority of the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2 to 6.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Environment Legislation Amendment (Safe Air) Bill 2026 with the proposed amendments set out in Recommendations 2 to 6.

¹ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, pp. 18-19.

Report Structure

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

2 Overview of the Bill

Background to the Bill

2.1 There are 4 hydrocarbon processing and storage facilities licensed to operate in the Northern Territory (NT):

- Eni Australia's Blacktip
- INPEX's Ichthys LNG
- Santos' Darwin LNG, and
- Crowley Australia's Project Caymus.²

Licensing

2.2 These 4 facilities are regulated under the *Waste Management and Pollution Control Act 1998* (the WMPC Act) and the *Environment Protection Act 2019* (the EP Act).³ In order to operate they must hold an Environment Protection Licence (EPL), which can require them to comply with a range of conditions:

LNG facilities in the NT that produce, store or despatch more than 500,000 tonnes of LNG per year must hold an Environment Protection Licence (EPL) under the *Waste Management and Pollution Control Act 1998* (NT) (WMPC [Act]). EPLs are granted by the NT [Environment Protection Authority (NT EPA)] and administered by the Environmental Regulation Division of the Department of Lands, Planning and Environment (DLPE).

In accordance with the WMPC [Act], licence conditions can require operators to meet specified environmental outcomes, comply with standards, implement pollution control and management measures, undertake monitoring and testing, report results and other information to the NT EPA, and prepare and implement environmental management plans.

EPLs primarily regulate pollutant discharges and emissions to protect local environmental values and human health. Greenhouse gas emissions are primarily addressed under the Commonwealth regulatory framework.⁴

2.3 EPLs must be consistent with approval conditions determined by environmental impact assessments conducted under the EP Act:

Projects with the potential for significant environmental impact must also undergo impact assessment under the *Environment Protection Act 2019* (NT) and previously the *Environmental Assessment Act 1982* (NT). As part of the assessment process, proponents must consider air quality, atmospheric processes and human health impacts. An Environmental Approval is granted by

² Department of Lands, Planning and Environment, *Inspecting Hydrocarbon Facilities Across the Top End to Ensure Environmental Compliance*, 28 August 2025, <https://environment.nt.gov.au/news/2025/inspecting-hydrocarbon-facilities-across-the-top-end-to-ensure-environmental-compliance>

³ Department of Lands, Planning and Environment, *Inspecting Hydrocarbon Facilities Across the Top End to Ensure Environmental Compliance*, 28 August 2025, <https://environment.nt.gov.au/news/2025/inspecting-hydrocarbon-facilities-across-the-top-end-to-ensure-environmental-compliance>; Department of Lands, Planning and Environment Environmental Regulation Division, *Compliance Plan 2025-26*, https://ntepa.nt.gov.au/_data/assets/pdf_file/0006/1573341/environment-compliance-plan-2025-26.pdf, p. 3.

⁴ Department of Lands, Planning and Environment, *Darwin Airshed LNG Licence Review*, July 2026, https://ntepa.nt.gov.au/_data/assets/pdf_file/0009/1625382/darwin-airshed-lng-licence-review.pdf, p. 11.

the Minister if impacts are considered to be manageable and risks are reduced to an acceptable level.

Licensing under the WMPC [Act] operates alongside the environmental impact assessment process and EPLs must be consistent with the recommendations or approval conditions from the assessment.⁵

National Air Quality Standards

- 2.4 The National Environment Protection (Ambient Air Quality) Measure provides maximum concentration standards for 7 pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, particulates 10 micrometers or less (PM₁₀), and particulates 2.5 micrometers or less (PM_{2.5}).⁶ These pollutants, apart from lead, are monitored by the existing network of air quality monitoring stations in Darwin, Palmerston, and Katherine.⁷

there is already a monitoring network in place, we are looking at improving that, but not necessarily substantively changing its operations. The current network is working well; it just does not monitor for certain parameters... it is managed by the department. It is not a legislative service we are providing at the moment, but it is committed to under the national framework, the ambient air quality monitoring NEPM. It is delivered as a commitment under that national framework.⁸

- 2.5 The National Environment Protection (Air Toxics) Measure applies to several volatile organic compounds, including benzene and toluene.⁹ The National Environment Protection (Air Toxics) Measure requires jurisdictions to identify sites where elevated levels of these compounds are expected to occur and to monitor them. However, unlike the National Environment Protection (Ambient Air Quality) Measure, it does not provide concentration standards.

Darwin airshed

- 2.6 Across several years, concerns have been raised regarding air pollutants in the Darwin airshed.¹⁰ Most recently, in October 2025, INPEX self-reported previous errors in their emissions reporting to the NT EPA. Revised figures showed that some chemicals hazardous to human health had been emitted at more than 100 times the reported rate, including volatile organic compounds such as benzene (4.12 tonnes

⁵ Department of Lands, Planning and Environment, *Darwin Airshed LNG Licence Review*, July 2026, https://ntepa.nt.gov.au/_data/assets/pdf_file/0009/1625382/darwin-airshed-lng-licence-review.pdf, p. 11.

⁶ National Environment Protection (Ambient Air Quality) Measure (Cth), Schedule 1; Northern Territory Environment Protection Authority, *About air pollutants*, 3 August 2022, <https://ntepa.nt.gov.au/your-environment/air-quality/about-air-pollutants>

⁷ Northern Territory Environment Protection Authority, *Northern Territory Ambient Air Quality Monitoring Report 2024*, 31 December 2025, https://ntepa.nt.gov.au/_data/assets/pdf_file/0006/1606218/annual-compliance-report-for-the-nt-2024-ambient-air-quality-nepm.pdf, p. 7.

⁸ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 5.

⁹ National Environment Protection (Air Toxics) Measure (Cth), Schedule 1.

¹⁰ For example, Fitzgerald, Roxanne, *This LNG plant near Darwin city releases thousands of tonnes of toxic chemicals. The impacts are not being assessed*, 17 June 2024, <https://www.abc.net.au/news/2024-06-14/inpex-ichthys-lng-plant-darwin-nt-vocs-emissions-increase/103668268>; Averill, Zizi, *Environmental and Safety Regulators failed to report a 20-year-old methane leak at Santos's Wickham Point facility*, 3 September 2025, <https://www.ntnews.com.au/business/nt-business/environmental-and-safety-regulators-failed-to-report-a-20yearold-methane-leak-at-santoss-wickham-point-facility/news-story/73790650e21f16a61066ad19f4e18a1b>

reported, 556.9 tonnes actual) and toluene (5.05 tonnes reported, 569.8 tonnes actual).¹¹

- 2.7 Consequently, the NT EPA commissioned reviews of the updated data and modelling by air quality experts, began an investigation into potential breaches of environmental law, and the NT Chief Health Officer commissioned an independent human health risk assessment.¹² The air quality review recommended several actions to address future risks, which were supported by the NT EPA. These included supporting the Department to strengthen air quality monitoring in Darwin.¹³ A review of the licensing regime was also completed in July 2026, called the *Darwin Airshed LNG Licence Review*.¹⁴

Purpose of the Bill

- 2.8 As explained by the Minister in his first reading speech:

The key purpose of this Bill is to amend the *Environment Protection Act 2019* to lay the legislative foundation for industry funded environmental monitoring schemes. The Bill also amends the *Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005*, the *Waste Management and Pollution Control Act 1998* and the *Waste Management and Pollution Control (Administration) Regulations 1998* to ensure that licence fees are applied consistently across all hydrocarbon operators, and to provide for an increase to annual licensing fees for the hydrocarbon industry.¹⁵

- 2.9 As further explained in the Explanatory Statement, the purpose of the Bill is to:

provide for the ability to establish through regulations environmental monitoring schemes, and to make some amendments to fees applied to hydrocarbon processing facilities. The Bill will achieve this by:

- providing for the ability of the Regulations to establish one or more environmental monitoring schemes;
- providing details of what may be provided for by Regulations in relation to an environmental monitoring scheme;
- extending the application of an annual fee for a licence to conduct an activity to the Blacktip hydrocarbon processing facility; and
- amending the annual fee for hydrocarbon processing facilities and expressing this in revenue units.¹⁶

¹¹ INPEX, *Ichthys LNG facility update*, 23 October 2025, <https://www.inpex.com.au/media/htind53q/ichthys-lng-emissions-reporting-23-october-2025.pdf>

¹² Northern Territory Environment Protection Authority and Chief Health Officer, *INPEX pollutant emissions underreporting: joint statement from NT EPA and Chief Health Officer*, 23 December 2025, <https://ntepa.nt.gov.au/news/2025/inpex-pollutant-emissions-underreporting-joint-statement-from-nt-epa-and-chief-health-officer>.

¹³ Northern Territory Environment Protection Authority and Chief Health Officer, *Independent review of Inpex pollutant emissions*, 27 February 2026, <https://ntepa.nt.gov.au/news/2026/independent-review-of-inpex-pollutant-emissions>.

¹⁴ Department of Lands, Planning and Environment, *Darwin Airshed LNG Licence Review*, July 2026, https://ntepa.nt.gov.au/data/assets/pdf_file/0009/1625382/darwin-airshed-lng-licence-review.pdf

¹⁵ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 18.

¹⁶ Explanatory Statement, *Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)*, https://parliament.nt.gov.au/data/assets/pdf_file/0006/1631193/Explanatory-Statement-Environment-Legislation-Amendment-Safe-Air-Bill-2026.pdf, p. 1.

3 Examination of the Bill

Introduction

- 3.1 The Committee received 12 submissions to its inquiry. Most submissions commented only on the proposed amendments to the EP Act. All submissions supported the intent of enhancing air quality in the NT. Additionally, most submitters sought further action to be taken beyond that proposed in the Bill. Most of these matters, such as the setting of emissions standards or limits, are outside of the scope of the Bill.
- 3.2 Some submitters raised concerns with specific provisions of the Bill and proposed recommendations to address them, including on matters such as:
- the breadth of the regulation-making power
 - publishing environmental monitoring data
 - annual licensing fees.

Environmental Monitoring Schemes

- 3.3 The Bill seeks to create a framework for establishing environmental monitoring schemes (EMSs). As the Minister explained in his first reading speech:

The Bill provides for the legislative power in the *Environment Protection Act 2019* for regulations to establish one or more environmental monitoring schemes. The type of monitoring is not limited. It could be a scheme for monitoring any aspect of the environment such as air, water, soil or pollutants. The Bill allows for the regulations to provide for the scope of the scheme and the establishment, operation and administration of the scheme. The Bill allows for the regulations to specify who needs to contribute to the scheme and how those contributions will be calculated.¹⁷

- 3.4 This was further explained by the Department in the public briefing:

The framework for an environmental monitoring scheme as provided for in the Bill is not specific to air quality monitoring. The definition of 'environmental monitoring scheme' is broad, applying to a program for monitoring environmental quality or the impacts on the environment or human health of actions, including substances or other matters resulting from those actions. This could be used if the need arose to set up an environmental monitoring scheme relating to monitoring water, soil, pollutants, noise or odour.

The Bill does not limit the framework for an environmental monitoring scheme by industry, sector or activity, but allows for a specified person or class of persons to be required to make contributions. This provides for flexibility as new industries develop in the Territory. The intention is to ensure that the industries and sectors impacting the environment can be required to make an ongoing contribution towards the cost of environmental monitoring.¹⁸

- 3.5 This is implemented through an amendment to the EP Act. Clause 4 seeks to insert Part 6A into the EP Act to create a regulation-making power to establish one or more EMS. An EMS is defined in proposed section 126A:

¹⁷ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, pp. 18-19.

¹⁸ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 2.

environmental monitoring scheme means a program for monitoring environmental quality or the impacts on the environment or human health of actions, including substances or other matters resulting from those actions.

3.6 Proposed section 126B(1) provides the regulation-making power. Proposed section 126B(2), without limiting proposed section 126B(1), specifies particular matters associated with an EMS that may be provided for by regulation. These matters are:

- proposed section 126B(2)(a): the purpose of an EMS
- proposed section 126B(2)(b): the actions and the region or area to which an EMS applies
- proposed section 126B(2)(c): the establishment, operation, and administration of an EMS
- proposed section 126B(2)(d): the appointment of one or more persons as a scheme administrator or joint scheme administrators, and the conferral of functions and powers on the administrator or administrators
- proposed section 126B(2)(e): the requirement for specified persons or classes of persons to make contributions towards all or part of the costs or anticipated costs of establishing, operating and administering an EMS
- proposed section 126B(2)(f): in relation to the contributions to be made by persons, or different classes of persons:
 - the method of calculating contributions, whether by reference to region, area, type of action or other criteria
 - the Minister to have the power to determine, by *Gazette* notice, the method of calculating contributions, whether by reference to region, area, type of action or other criteria
- proposed section 126B(2)(g): the establishment of a fund for an EMS, including payments into and out of the fund, and accounting, auditing and reporting requirements
- proposed section 126B(2)(h): compliance, enforcement, and reporting requirements in relation to an EMS
- proposed section 126B(2)(i): any other matter necessary or convenient for the establishment, operation or administration of an EMS.

Framework legislation

3.7 Many submitters told the Committee that they wanted the Bill to directly implement an air quality monitoring scheme (AQMS) rather than establishing a framework by which an AQMS could be established.¹⁹ For example, Community Healthy Air Northern Territory submitted that:

¹⁹ Community Healthy Air Northern Territory, Submission No. 3, p. 4; Environmental Defenders Office, Submission No. 4, pp. 12-14; Environment Centre NT, Submission No. 5, pp. 5, 8-9; Grusha Leeman, Submission No. 6, p. 1; Climate and Health Alliance, Submission No. 7, p. 12.

The Bill proposes to delegate a *discretion only* to establish an environmental monitoring scheme with all the key details of how the scheme would operate to be determined by regulations. Amendments should be designed to ensure legislated protection of public health from preventable industrial air pollution.²⁰

- 3.8 Climate and Health Alliance raised a similar point, noting that there was no guarantee that an AQMS would be established following commencement of the Bill:

The Safe Air Bill only creates a power which gives rise to a discretion, not a requirement, to establish an environmental monitoring scheme, which could include an air quality monitoring scheme. The establishment of an air quality monitoring scheme is not mandated and none of the critical details about how an air quality monitoring scheme would operate, nor any prescriptive protective measures, are in the Bill.²¹

- 3.9 Submitters told the Committee that the regulation-making power provided in proposed section 126B of the Bill is too broad.²² In particular, three submitters argued that the regulation-making power was a matter for the Committee to consider under clause (3)(b)(iv) of the Committee's Terms of Reference.²³ Clause (3)(b)(iv)(A) requires the Committee to consider whether a Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. Additionally, clause (3)(b)(iv)(B) requires the Committee to consider whether a Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. Submitters were concerned that too much of the policy substance of the Bill was left to regulations, impeding parliamentary scrutiny of the Bill's policy. For example, the Environmental Defenders Office told the Committee that:

The Safe Air Bill does not sufficiently subject the exercise of the powers under the Bill to the scrutiny of the Legislative Assembly. Clause 4 of the Bill proposes to delegate the *discretion*, not requirement, to establish an environmental monitoring scheme to be determined by the Executive through regulations.

The Safe Air Bill does not include any details regarding the proposed environmental monitoring schemes and instead leaves these details to regulations...

Many of the most important decisions in the Safe Air Bill are not being made by the Legislative Assembly but instead are being deferred. There is an important distinction between delegating technical matters necessary to administer legislation and delegating the substantive content of a regulatory protection regime.

- 3.10 Similarly, Grusha Leeman also criticised the Bill for an over-reliance on the use of regulations to deliver the policy of the Bill:

...this Bill establishes a pathway for air monitoring through NT regulations. My understanding is Bills are the law and regulations can be altered in secret at the drop of a hat. I suggest that the main things we need are embedded in the law. The regulations are there just to keep things up to date, to improve upon the law, not be everything.²⁴

²⁰ Community Healthy Air Northern Territory, Submission No. 3, p. 4

²¹ Climate and Health Alliance, Submission No. 7, p. 9.

²² Justin Tutty, Submission No. 1, pp. 3-4; Environmental Defenders Office, Submission No. 4, pp. 12-14; Environment Centre NT, Submission No. 5, p. 5; Climate and Health Alliance, Submission No. 7, pp. 9-10.

²³ Community Healthy Air Northern Territory, Submission No. 3, p. 4; Environmental Defenders Office, Submission No. 4, pp. 12-13; Climate and Health Alliance, Submission No. 7, p. 9-10.

²⁴ Grusha Leeman, Submission No. 6, p. 1.

- 3.11 In contrast to the above submitters, the NT EPA supported the breadth of regulation-making powers. They argued that the flexibility of the framework legislation would support ongoing development of different EMSs, as and when required:

The NT EPA notes that the Bill provides a broad definition of monitoring schemes, which will future proof the legislation to include other schemes if needed.²⁵

Committee's comments

- 3.12 The Committee notes that Part 2 of the Bill is an example of 'framework' or 'skeleton' legislation. Framework legislation establishes the principles or architecture of a policy in primary legislation and then enables the substantive delivery of the policy to be made by subordinate legislation. The Committee notes it is generally considered inappropriate to include procedural matters that go to the essence of the legislative scheme in subordinate legislation, rather than in an Act.²⁶ This is because provision of significant matters in subordinate legislation can inhibit parliamentary scrutiny and oversight.²⁷ Despite this, the majority of the Committee observes that individual circumstances may justify a particular matter being included in subordinate legislation.²⁸ In this instance, whilst noting the implications of framework legislation on parliamentary oversight, the majority of the Committee is satisfied that the need for flexibility sufficiently justifies the inclusion of these matters in subordinate legislation.
- 3.13 Consideration of the substantive policy of an EMS will most appropriately occur when the regulations have been made and tabled. The Committee notes that any regulations made pursuant to the powers in proposed section 126B will be subject to scrutiny by the Legal and Constitutional Affairs Committee,²⁹ and disallowance by the Assembly.³⁰
- 3.14 With regard to the breadth of the regulation-making power, the Committee has made several recommendations throughout this report that more closely define powers or provide additional safeguards.

Discretion within the regulation-making power

- 3.15 Proposed section 126B(1) provides that regulations may establish an EMS. Without limiting subsection (1), proposed section 126B(2) provides that the regulations *may* provide for matters set out in proposed sections 126B(2)(a)-(i) in relation to an EMS.
- 3.16 Several submitters raised concerns with the drafting of this power, associated with the framework nature of the Bill. In particular, these concerns related to the

²⁵ Northern Territory Environment Protection Authority, Submission No. 8, p. 1.

²⁶ Australian Government, Department of the Prime Minister and Cabinet, *Legislation Handbook*, 2025, pp. 6-7.

²⁷ Senate Standing Committee for the Scrutiny of Bills, *Guidelines*, 2nd Edition, https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/Guidelines/Scrutiny_of_Bills_Guidelines_-_2nd_edition.pdf, pp. 18-19.

²⁸ Australian Government, Department of the Prime Minister and Cabinet, *Legislation Handbook*, 2025, pp. 6-7.

²⁹ Sessional Order 4; Standing Order 176, Standing Order 178.

³⁰ *Interpretation Act 1978* (NT), s 63C.

discretionary nature of the power and that there were no minimum requirements regarding an EMS.³¹ For example, Justin Tutty told the Committee that:

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.³²

3.17 Because of this, submitters highlighted a range of matters they believed should be required by the Bill. Many features sought to be mandatory were related specifically to an AQMS rather than an EMS. For example, submitters recommended that:

- The Bill should contain commencement dates for the AQMS.³³
- AQMS monitoring should be conducted by an accredited or otherwise qualified person.³⁴
- AQMS monitoring should be conducted in alignment with international air quality standards, national air quality standards or in accordance with specified methods.³⁵
- Pollutants to be monitored by the AQMS should be specified in the Bill.³⁶
- The point of measurement of pollutants monitored by the AQMS should be specified in the Bill.³⁷

3.18 The Committee asked the Department to explain why all matters that regulations may provide for under 126B(2)(a)-(i) were discretionary. The Department did not provide the Committee any rationale for this, instead advising that most matters could be made non-discretionary:

Most of the matters in (a)-(i) could be non-discretionary, because they would be necessary for the successful operation of an environmental monitoring scheme...³⁸

3.19 The Committee further asked the Department which matters that may be provided for by regulations would always be necessary for the successful operation of an EMS. The Department told the Committee that most elements would always be necessary:

It is considered that of the matters provided for in (a) to (i), all would be necessary for the successful operation of an environmental monitoring scheme, except for:

- s 126B(2)(d), the conferral of functions and powers on the administrator or administrators would be necessary for a successful scheme, but the appointment of administrators by regulation is not necessary. The scheme could refer to 'the administrator', without specifying which department or entity

³¹ Justin Tutty, Submission No. 1, p. 3; Environmental Defenders Office, Submission No. 4, p. 12; Environment Centre NT, Submission No. 5, p. 5; Climate and Health Alliance, Submission No. 7, p. 9.

³² Justin Tutty, Submission No. 1, p. 3

³³ Justin Tutty, Submission No. 1, p. 6; Grusha Leeman, Submission No. 6, p. 3.

³⁴ Justin Tutty, Submission No. 1, p. 3.

³⁵ Justin Tutty, Submission No. 1, p. 3; Grusha Leeman, Submission No. 6, p. 1.

³⁶ Environment Centre NT, Submission No. 5, p. 8; Climate and Health Alliance, Submission No. 7, p. 9;

³⁷ Environment Centre NT, Submission No. 5, p. 8; Climate and Health Alliance, Submission No. 7, p. 9;

³⁸ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

(e.g. statutory authority) is the administrator, because this could be subject to change.

- s 126B2(g)- the establishment of a fund – a monitoring scheme could be done without an established fund, for example by NTG paying for the monitoring and invoicing the participants for their share. For transparency, the requirements relating to accounting, auditing, and reporting could be separated from the establishment of a fund, because this would be required in any case.³⁹

3.20 The Committee also sought legal advice from its independent legal counsel, Professor Ned Aughterson, regarding these provisions. Professor Aughterson advised that:

The discretionary power imported by the term 'may' gives rise to some potential concerns.

First, all of the listed matters, and each of them individually, are at the discretion of the executive. In theory, that means that it would be within power to make regulations under clause (2)(f) (contributions) and clause (2)(h) (compliance etc.) in circumstances where regulations have not been introduced under clauses (2)(a) (purpose of the scheme), (2)(b) (actions and the region etc), and (2)(c) (establishment, operation etc)...

It is not clear why most if not all of the matters at sub-clauses (a) to (i) are not mandated should a scheme be established; in particular, matters (a) to (d). That is especially so given the power at (h) to make regulations in relation to 'compliance, enforcement and reporting'. The validity of any enforcement, for example, would be contextual, including in relation to the purpose of the scheme and the actions or areas to which the scheme applies: see sub-clauses (a) and (b).⁴⁰

3.21 Professor Aughterson also highlighted that:

...the requirement at sub-clause (2)(g) for 'accounting, auditing and reporting' in relation to any established fund is consistent with standard requirements relating to open government. In relation to this sub-clause, and consistent with that ideal, the Explanatory Statement states: 'This is to ensure the scheme is transparent and accountable'. However, sub-clause (2)(g) is permissive and allows for the establishment of a fund, *including* requirements relating to accounting, auditing and reporting'. It does not provide that if a fund is established there *must* be accounting, auditing and reporting requirements. It is noted that in its response the Department agreed that a scheme should always have such provisions.⁴¹

Committee's comments

3.22 The Committee considers that many of the matters recommended by submitters to be required as part of any regulations made under proposed section 126B(2) are specific to an AQMS and as such would be inappropriate for the EMS framework.

3.23 The broader point raised by submitters regarding the discretionary nature of the regulation-making power touches upon clause (3)(b)(iv)(A) of the Committee's Terms

³⁹ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁴⁰ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, pp. 2-3.

⁴¹ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, p. 3.

of Reference, which requires the Committee to consider whether a Bill delegates legislative power only in appropriate cases. This is because the drafting of this proposed section provides little guidance on the face of the Bill. The regulation-making power can be exercised to create substantially different EMS, with a diversity of policy and administrative arrangements.

- 3.24 The Committee considered the benefits and risks of requiring certain matters to be provided for by regulation, rather than enabling the regulation-maker to exercise discretion. While requiring matters to be provided for would more closely define the delegation of legislative power, the majority of the Committee notes this approach would be overly prescriptive. Requiring matters to be included in the regulations may have unanticipated impacts on the establishment of a future EMS, beyond the planned AQMS.
- 3.25 Further, the Committee considers that discretion provided for by the regulation-making power is sufficiently balanced by the Assembly's oversight of regulations. As previously discussed, any regulations established under this power will be subject to the scrutiny of the Legal and Constitutional Affairs Committee and disallowance by the Assembly. This means that any regulations seeking to establish an EMS without appropriately providing for the purpose of an EMS or other key elements of an EMS may be disallowed, if it is the will of the Assembly. Overall, the Committee is satisfied with the discretion provided in the regulation-making power.

Scheme administrators

- 3.26 The Explanatory Statement explains that the regulations may appoint scheme administrators under proposed section 126B(2)(d), which are normally anticipated to be government departments:

New section 126B(2)(d) provides that the Regulations may provide for the appointment of one or more persons as a scheme administrator, or as joint scheme administrators, and the conferral of functions and powers on the administrator or administrators. It is anticipated that generally the administrator of an environmental monitoring scheme will be one more government Departments, but this provision allows for flexibility as required.⁴²

- 3.27 However, Justin Tutty and the Climate and Health Alliance submitted that, as drafted, proposed section 126B(2)(d) would enable a wider range of people to be appointed as scheme administrators. In particular, they raised concerns that persons appointed as scheme administrators may be a contributor to the environmental impact or human health impact being monitored by an EMS.⁴³ For example, Justin Tutty told the Committee that:

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.

⁴² Explanatory Statement, *Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)*, https://parliament.nt.gov.au/data/assets/pdf_file/0006/1631193/Explanatory-Statement-Environment-Legislation-Amendment-Safe-Air-Bill-2026.pdf, p. 2.

⁴³ Justin Tutty, Submission No. 1, p. 5; Climate and Health Alliance, Submission No. 7, p. 12.

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.⁴⁴

- 3.28 The Committee asked the Department if it would be possible for a specified person identified in 126B(2)(e) to be appointed as the scheme administrator. They confirmed this was the case.⁴⁵ The Committee also asked the Department their rationale for this. The Department advised the Committee that there would be few circumstances where it would be appropriate for industry to administer an EMS monitoring the impact of their own activities:

It is possible that an environmental monitoring scheme could have administrators including industry operator(s). However, this is not particularly intended or sought as the schemes would be structured to be government-owned and government-operated to ensure independence from industry. There would be limited circumstances, if any, in which industry-owned and industry-operated scheme would be appropriate.⁴⁶

- 3.29 Indeed, the Department identified several risks associated with industry self-administration of an EMS:

This may risk compromising the independence of the monitoring scheme, and the community's confidence in the scheme. The risks of any such arrangement would be considered at the time of the development of the proposed environmental monitoring scheme.⁴⁷

- 3.30 Professor Aughterson also highlighted concerns regarding potential conflicts of interest in his legal advice to the Committee:

sub-clause (2)(d) allows for the appointment of scheme administrators and for the conferral of functions and powers on them. There is no restriction or requirement in relation to experience or background of the person appointed. Compare s 11(1) of the Territory Coordinator Act, which provides for the appointment of an 'eligible person' as the Coordinator. Section 11(2) then provides:

A person is an eligible person if the person has suitable qualifications or experience relating to the Territory Coordinator's functions.

In the Explanatory Statement it is noted, in relation to sub-clause (2)(d), that it 'is anticipated that generally the administrator of an environmental monitoring scheme will be one or more Government Departments, but this provision allows for flexibility as required'.

However, there is potential for conflicts of interest and duty in relation to any appointment under the present Bill, given that the person appointed could have an interest in an industry or business that might be affected by the Regulation. In

⁴⁴ Justin Tutty, Submission No. 1, p. 5.

⁴⁵ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁴⁶ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁴⁷ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

that context, it is noted that sub-clause (2)(e) deals with the specification of persons required to make contributions towards the costs of the scheme, while sub-clause (2)(h) deals with compliance and enforcement requirements.

In its response, the Department acknowledged that, as drafted, the administrators could include industry operators. It is added that this is 'not particularly intended or sought' and that there would be limited circumstances, if any, in which such an appointment would be appropriate. However, it remains that there is such potential and consideration might be given to placing some limitations on these appointments.⁴⁸

Committee's comments

- 3.31 The Committee observes that, despite not being intended or sought by the Department, as currently drafted it is possible that a person being required to contribute to the costs of an EMS could be appointed as a scheme administrator of that EMS. This means that it is possible that industry could be appointed to administer an EMS that has been established to monitor the impact of their own activities. As the Department outlined, this could create conflicts of interest and undermine public confidence in an EMS. The Committee notes this concern is particularly apt when considering that the scheme administrator will be in control of the scheme funding.
- 3.32 While the Committee acknowledges the value of administrative flexibility, in the Committee's view the effect of proposed section 126B(2)(d) is broader than the operation of the provision contemplated in the Explanatory Statement and the Department's evidence.
- 3.33 The Committee observes that restricting eligibility for appointment as a scheme administrator would provide greater certainty regarding the administration of EMS and would better align the statutory framework with the policy intention described to the Committee. Accordingly, the Committee recommends amending the Bill to prohibit a person from being appointed as a scheme administrator if they are required to make contributions towards the costs of that EMS.

Recommendation 2

The Committee recommends that Clause 4 of the Bill be amended to prohibit a person from being appointed as a scheme administrator if they are required to make contributions towards that environmental monitoring scheme.

Contributions towards costs

- 3.34 The Explanatory Statement explains that under proposed section 126B(2)(e) the regulations may require a specified persons or classes of persons to contribute towards the costs of an EMS:

the Regulations may provide for the requirement for specified persons or classes of persons to make contributions towards all or part of the costs or anticipated costs of establishing, operating and administering the scheme. This will allow for the industries or sectors engaging in actions that may have impacts on the environment to be required to contribute to the cost of establishing, operating and

⁴⁸ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, pp. 3-4.

administering an environmental monitoring scheme. Provision is made for 'anticipated costs' to clarify that contributions may be for costs that have not yet been incurred, but are anticipated to be incurred (for example, the purchase of new monitoring equipment).⁴⁹

- 3.35 The method of determining the value of these contributions may be provided by regulations under proposed section 126B(2)(f). As explained in the Explanatory Statement, the regulations may directly provide the method of calculating contributions required of a person or class of persons or enable the Minister the power to determine that method:

New section 126B(2)(f)(i) provides that the Regulations may provide for the method of calculating contributions payable by different classes of persons, by reference to region, area, type of action or other criteria.

New section 126B(2)(f)(ii) provides that the Regulations may provide for the Minister to have the power to determine by Gazette notice the method of calculating those contributions, whether by reference to region, area, type of action or other criteria. It is anticipated that the contributions will generally be set by a method or calculation set out in the Regulations, but this provision allows for flexibility if required.⁵⁰

- 3.36 Several submitters highlighted concerns regarding proposed section 126B(2)(e). They noted that despite the stated policy intent of each EMS to be industry-funded, the regulation-making power as drafted does not require a person or class of persons required to contribute to an EMS to be a contributor to the environmental quality or environmental or human health impact being monitored. As such, submitters told the Committee that the industry-funded nature of an EMS should be clarified in the Bill.⁵¹ For example, Environment Centre NT recommended to the Committee that the Bill should:

Implement... the polluter pays principle, by establishing mandatory requirements for industrial polluters to fund environmental monitoring, regulatory expenditure and public health measures in line with the strongest polluter-pays standards⁵²

- 3.37 The Committee asked the Department whether a specified person or classes of persons could be required to contribute towards the costs of an EMS without contributing to the environmental or human health impact being monitored. The Department advised that this was possible, but not consistent with the purpose of an EMS:

Technically yes, but this would not be consistent with the intended purpose of the scheme, and it is hard to imagine regulations being approved that do this.⁵³

⁴⁹ Explanatory Statement, *Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)*, https://parliament.nt.gov.au/_data/assets/pdf_file/0006/1631193/Explanatory-Statement-Environment-Legislation-Amendment-Safe-Air-Bill-2026.pdf, p. 2.

⁵⁰ Explanatory Statement, *Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)*, https://parliament.nt.gov.au/_data/assets/pdf_file/0006/1631193/Explanatory-Statement-Environment-Legislation-Amendment-Safe-Air-Bill-2026.pdf, pp. 2-3.

⁵¹ Justin Tutty, Submission No. 1, p. 4; Environmental Defenders Office, Submission No. 4, p. 14; Environment Centre NT, Submission No. 5, p. 9; Climate and Heath Alliance, Submission No. 7, p. 12; Kathie Rea, Submission No. 9, p. 1.

⁵² Environment Centre NT, Submission No. 5, p. 9.

⁵³ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

- 3.38 The Committee notes the policy intent of the Bill is for EMS to be industry-funded. This was outlined in the Minister's first reading speech:

This Bill... provides the legislative basis for contemporary, industry-funded monitoring arrangements that will improve data, promote transparency and strengthen public confidence in the environmental regulation of Territory industries.

Industrial activity is vital to economic growth and jobs, but that growth must go hand-in-hand with upholding environmental standards and public confidence and that is what this Bill delivers.⁵⁴

- 3.39 Accordingly, the Committee asked the Department whether there would be any risks or benefits in requiring the contributions to be industry funded. The Department advised that, if drafted appropriately, it would not be an issue:

If the drafting is possible so that the 'person or class of persons' can be linked as a contributor or potential contributor to the environmental or human impact being monitored by the environmental monitoring scheme, we cannot see any risks and there may be benefits to the clarity of the legislation.

The reference to 'potential contributors' is important to ensure the provision is broad enough to capture baseline monitoring, including monitoring undertaken before an impact has occurred.⁵⁵

- 3.40 The Committee also sought legal advice from Professor Aughterson regarding the requirement for specified persons or classes of persons to contribute to costs of an EMS. He advised the Committee that:

....in relation to the requirement at sub-clause (2)(e) for specified persons to make contributions towards the costs of the scheme, the Explanatory Statement states that this 'will allow for industries or sectors engaging in actions that may have impacts on the environment to contribute to the cost' of the scheme. On the other hand, sub-clause (2)(e) is broadly drafted and there is no limitation on the 'specified persons or classes of persons' who may be required to make contributions. In its response, the Department acknowledged that there 'may be benefits' in clarifying the legislation so that there is a link between persons making contributions and persons who contribute or potentially contribute to the environmental or human impact that is being monitored. Again, consideration might be given to including some such limitation.⁵⁶

Committee's comments

- 3.41 Despite the clear policy intent of the Bill to be industry-funded, the Committee notes that, as presently drafted, regulations made pursuant to proposed section 126B(2)(e) could require a person or class of persons to contribute towards the costs of an EMS if they had not contributed to the environmental quality or environmental or human health impact being monitored.

⁵⁴ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 19.

⁵⁵ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁵⁶ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, p. 4.

- 3.42 Accordingly, the Committee recommends that the Bill be amended to link requirements to contribute to the costs of an EMS with impact on the environmental quality or environment or human health impact being monitored. As per the Department's advice, this requirement should be broad enough to enable contributions to be required from those anticipated to impact an environmental quality or environment or human health, to enable baseline monitoring to be undertaken.

Recommendation 3

The Committee recommends that proposed section 126B(2)(e) be amended to provide that a specified person or class of persons required to make contributions towards an environmental monitoring scheme must have taken or may take an action that impacts the environmental quality or environment or human health being monitored.

Review rights

- 3.43 Justin Tutty told the Committee that there should be broad standing for review of contribution values.⁵⁷
- 3.44 At present, proposed section 126B is silent on the provision of review. The Committee observes that section 276 of the EP Act provides that judicial review by the Supreme Court is available.⁵⁸ However, noting the discretionary nature of the framework and the limitations of judicial review, the Committee sought advice from the Department regarding the availability of independent merits review by the Northern Territory Civil and Administrative Tribunal (NTCAT).⁵⁹ The Department advised that:
- It is anticipated that the amounts of money involved are not large in the scheme of the operator's business. The amounts will be justifiable by reference to the cost of the scheme, and there will be transparency with respect to accounting, auditing, and reporting. Adding a non-discretionary review rights adds a degree of complexity that is not warranted.⁶⁰
- 3.45 The Committee notes that the Department's rationale aligns with established grounds for the exclusion of independent merits review outlined by the Administrative Review

⁵⁷ Justin Tutty, Submission No. 1, p. 7.

⁵⁸ Section 276 of the EP Act (Standing for judicial review) provides that:

(1) A person may seek judicial review of a decision of the Minister, the CEO, the NT EPA or an environmental officer under this Act if the person is:

- (a) a proponent of an action to which the decision relates; or
- (b) an applicant for the decision; or
- (c) a person directly affected by the decision; or
- (d) a person who has made a genuine and valid submission during an environmental impact assessment process or environmental approval process under this Act to which the decision relates; or
- (e) a person who has made a genuine and valid submission during an environmental (mining) licence process under this Act to which the decision relates.

⁵⁹ Merits review of decisions may be conducted by the NTCAT if an Act provides authority for that decision to be subject to review by NTCAT.

⁶⁰ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

Council,⁶¹ being that a decision has so limited an impact that the costs of review cannot be justified.⁶²

- 3.46 The Department also advised review rights could be provided for by future regulations within the scope of proposed section 126B(2)(i), if they are considered necessary in the future:

If in the future there is an environmental monitoring scheme under development which it is determined should have review rights, these can be added to the scheme in any case, under 126B(2)(j) [sic], as any other matter necessary for the operation of the scheme.⁶³

- 3.47 The Committee notes that, in the absence of an amendment to the EP Act to expressly provide for NTCAT review, such review rights would be constrained to internal review. The Committee also notes there is precedent in the EP Act for the explicit provision of internal review of certain decisions.⁶⁴

- 3.48 The Committee sought legal advice from Professor Ned Aughterson regarding review rights. He told the Committee that:

...it is noted that there is no right to merits review in relation to decisions made pursuant to the Regulations, though it remains that judicial review is open before the Supreme Court. In its response in relation to this issue, the Department said that it anticipated that the amounts of money involved in relation to contribution requirements under sub-clause (2)(e) would not be large in the scheme of the operation of the operator's business and that adding a review right 'adds a degree of complexity that is not warranted'. It was also stated that if needed review rights could be added pursuant to sub-clause (2)(i). While it might be that the contributions will be relatively small, there are other aspects of the scheme which might warrant review, including compliance requirements. The desirability of a mechanism for merits review is highlighted by the permissive nature of the

⁶¹ Administrative Review Council, *What decisions should be subject to merit review?*, 1999, <https://www.ag.gov.au/legal-system/publications/arc-what-decisions-should-be-subject-merit-review-1999>.

⁶² The Administrative Review Council outlines that exclusion of merits review is justifiable on the grounds that: **Decisions which have such limited impact that the costs of review cannot be justified**

Merits review costs money. Given that the Government must allocate resources in an effective way, it would obviously be inappropriate to provide a system of merits review where the cost of that system would be vastly disproportionate to the significance of the decision under review.

For example, merits review of a decision not to waive a filing fee of, say, \$150 may be difficult to justify on an economic basis. That said, the cost of review must be accounted for not only by comparison with the extent of the interests of any individual that may be affected, but also by comparison with the broader and beneficial effects that merits review is intended to have on the overall quality of government decision-making.

⁶³ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁶⁴ For example, section 129(5) of the EP Act provides that the amount of an environment protection bond can be recalculated under several circumstances, including upon request of the approval holder being required to pay the bond. Similarly, section 132C(5) of the EP Act sets out that the amount of mining security can be recalculated upon request of the mining operator. Additional review mechanisms relating to claims made on environment protection bonds and mining securities are provided in the Environment Protection Regulations 2020. Regulation 234 requires the Minister to notify an approval holder prior to making a claim on an environment protection bond and provide the approval holder an opportunity to make a submission to the Minister regarding the intended claim. Regulation 234A outlines the same process when the Minister intends to make a claim on a mining operator's security bond.

potential Regulations and the uncertain scope or detail as to their operation, as noted above.⁶⁵

Committee's comments

- 3.49 The Committee considers that existing rights to seek judicial review in the EP Act is not a sufficient safeguard for the matters proposed to be provided for in the regulations. However, the Committee acknowledges the Department's rationale for the exclusion of merits review from the Bill. The Committee observes that there may be circumstances in the future where independent merits review is appropriate, dependent on the nature of future regulations and the extent to which they make rights, liberties, and obligations dependent on administrative decisions. Should merits review be required in the future the Committee notes that an amendment to the EP Act will be required to provide authority for NTCAT review.
- 3.50 Instead, the Committee recommends that clause 4 of the Bill be amended to provide a mechanism for specified persons or classes of persons to seek internal review regarding an EMS. This review mechanism should enable a person to seek review of whether:
- they should be required to contribute towards the costs of an EMS under proposed section 126B(2)(e), noting the Committee's recommendation to restrict the scope of people who can be required to contribute towards an EMS to those impacting the matters being monitored, and
 - the amount required to be contributed has been calculated correctly in accordance with any methods provided under proposed section 126B(2)(f).
- 3.51 In addition, the Government should also consider whether internal review mechanisms for any other matters provided in proposed section 126B(2), such as compliance requirements, would appropriately strengthen safeguards in the Bill.

Recommendation 4

The Committee recommends that Clause 4 of the Bill be amended to provide a mechanism for specified persons or classes of persons to seek review regarding an environmental monitoring scheme, including whether a person should be required to contribute to costs and the calculation of the amount required to be contributed.

Gazette notice

- 3.52 As noted above, proposed section 126B(2)(e) provides that regulations may require a person or class of persons to contribute to the costs of an EMS. In written correspondence, the Department requested the Committee consider recommending that the Bill be amended to enable the Minister, by *Gazette* notice, to determine the person or class of persons required to contribute to the costs of an EMS. The Department told the Committee that:

⁶⁵ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, p. 4.

As is standard practice, preparation for the drafting of Regulations has commenced following the introduction of the Environment Legislation Amendment (Safe Air) Bill 2026 (the Bill) into the Legislative Assembly. During this process, it has become apparent that a minor amendment to the Bill is required to ensure the Regulations can be drafted as intended and give full effect to the Government's policy objectives.

In particular, proposed section 126B(2)(e) of the Bill provides that the Regulations may prescribe the requirement for specified persons or classes of person to make contributions towards all or part of the costs or anticipated costs of establishing, operating and administering an environmental monitoring scheme. To support the effective operation of this provision, the Bill should also empower the Minister to specify, by *Gazette* notice, the persons or classes of persons to whom the contribution requirements apply. The Regulations would continue to establish the obligation to contribute, while the *Gazette* notice would identify the entities captured by the scheme.

This approach would be particularly beneficial where a scheme applies to entities across multiple industries, rather than to all participants within a single industry, as is the case for emitters of air pollutants. It would also avoid the need to identify individual persons or bodies corporate in the Regulations, which is not considered appropriate. In addition, enabling the Minister to specify persons or classes of persons by *Gazette* notice would provide the flexibility to bring new entrants into the scheme, or remove entities that are no longer captured, in a timely manner without requiring amendments to the Regulations.

The amendment is technical in nature and does not alter the underlying policy intent or operation of the Bill. Rather, it provides the necessary legislative authority to support the proposed Regulations and ensures the regulatory framework operates as intended. It is also consistent with the existing drafting approach in proposed section 126B(2)(f)(ii), which already empowers the Minister to determine, by *Gazette* notice, the method of calculating those contributions (whether by reference to region, area, type of action or other criteria).

Extending the use of a *Gazette* notice to identify the persons or classes of persons subject to the contribution requirements is therefore a logical and complementary administrative mechanism.⁶⁶

- 3.53 The Committee notes that proposed section 126B(2)(f) does not provide the Minister a general power to determine the method of calculating the contributions by *Gazette* notice. It provides that the regulations may provide the Minister the power to determine the method of calculating contributions. Empowering regulations must first be made before the Minister may determine the method of calculation by *Gazette* notice. The Committee clarified this provision with the Department, asking if it was intended that the Minister should only be able to determine the method of calculating contributions by *Gazette* notice upon first being empowered by the regulations to do so. The Department confirmed this was the case:

Yes. For avoidance of doubt, not every scheme may require the methodology to be determined by *Gazette*, sometimes it could be prescribed by regulations.⁶⁷

⁶⁶ Department of Lands, Planning and Environment, *Environment Legislation Amendment (Safe Air) Bill 2026*, (unpublished), 7 September 2026.

⁶⁷ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

- 3.54 The Committee also asked the Department if the same mechanism was intended regarding their requested amendment to proposed section 126B(2)(e). They confirmed that this was the case here too.⁶⁸

Committee's comments

- 3.55 The Committee observes that the Department's proposed amendment would expand the discretionary administrative power that may be exercised. However, within the context of recommendations 3 and 4, the Committee considers that the Department's requested amendment would expand administrative power within acceptably defined parameters and with appropriate review rights. On this basis, to support the operation of EMSs, the Committee recommends that the regulation-making power be amended to provide that the regulations may provide the Minister the power to determine, by *Gazette* notice, the specified persons or classes of persons required to contribute to an EMS.

Recommendation 5

The Committee recommends that proposed section 126B(2)(e) be amended to provide that the Regulations may empower the Minister to specify, by *Gazette* notice, the persons or classes of persons to whom the contribution requirements apply.

Enforcement and compliance

- 3.56 The Explanatory Statement explains that proposed section 126B(2)(h) provides that:
- the Regulations may provide for compliance, enforcement and reporting requirements in relation to the scheme.⁶⁹

- 3.57 At the public briefing the Committee asked the Department what compliance and enforcement mechanisms would be implemented to ensure industry contributes to monitoring costs. The Department told the Committee that:

As part of developing the regulations we will be looking at how we would enforce the failure to pay contributions into the scheme. The environmental standards that are applied to operating facilities and industries are implemented more through the assessment, licensing and approval of those facilities under separate regimes, such as NT EPA licensing under the *Waste Management and Pollution Control Act* and environmental assessment processes under the *Environment Protection Act*. Those regimes already have a range of compliance and enforcement tools for noncompliance with licences or approvals.⁷⁰

- 3.58 Following this, the Committee asked the Department for more information regarding compliance, enforcement and reporting mechanisms. The Department told the

⁶⁸ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁶⁹ Explanatory Statement, *Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73)*, https://parliament.nt.gov.au/data/assets/pdf_file/0006/1631193/Explanatory-Statement-Environment-Legislation-Amendment-Safe-Air-Bill-2026.pdf, p. 3.

⁷⁰ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 4.

Committee that an existing offence in the Environment Protection (National Pollutant Inventory) Objective 2004 is planned to be utilised for the AQMS:

The identified types of conduct that could result in compliance/enforcement action are:

- the failure to make the required monetary contribution, and
- conduct to avoid being captured in the category of 'specified persons' – e.g. false reporting of any pollutant thresholds.

The AQMS is being developed may use the NPI reported data to set thresholds. There is an offence in the ENVIRONMENT PROTECTION (NATIONAL POLLUTANT INVENTORY) OBJECTIVE 2004 that would apply to under reporting. This means the only compliance or enforcement action considered in relation to the AQMS would be the recovery of the unpaid amount. This would be enforcement of a debt due and payable to the Territory.⁷¹

3.59 The Committee asked the Department which enforcement powers would be able to be exercised on the basis of proposed section 126B(2)(h). The Department told the Committee that all powers listed in section 163 of the EP Act could be exercised by environmental officers, as long as the power were necessary to exercise a power or perform a function under the EP Act:

...the powers listed in section 163 could be exercised... This would be to ensure that all persons that should be contributing to the environmental monitoring scheme are doing so... the exercise of powers in 163 needs to have a basis in being necessary to exercise a power or performing a function under the Act. For example, an officer investigating fraudulent conduct relating to an air quality monitoring scheme could require production of a document under s 163(1)(o), or require a person to provide access to a computer under s 163(1)(q), but could not justify other things such as moving any vehicle (s 163(1)(b)), or digging up land (s 163(1)(j)).⁷²

3.60 In their response to Committee questions, the Department appeared to suggest that they may seek to create offence provisions for a future EMS on the grounds of the regulation-making power proposed in the Bill:

...future environmental monitoring schemes may determine inclusion as a person who must pay into the scheme using different thresholds or data that is not under a scheme that includes its own offence. In this case, it is possible that the environmental monitoring scheme would include an offence about conduct to avoid inclusion in the scheme, and it is conceivable that in this case, environment officers would use the enforcement powers in the EP Act to investigate.⁷³

⁷¹ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁷² Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁷³ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

- 3.61 Similarly, when asked what safeguards exist to limit the use of powers, the Department further advised that powers would be limited to offences included in the regulations:

The use of powers would be limited to any offence included in regulations to support an environmental monitoring scheme by ensuring operators cannot avoid inclusion by fraud or similar conduct.⁷⁴

- 3.62 The Committee sought legal advice from Professor Ned Aughterson on this matter, asking if the Bill or EP Act provided sufficient authority to create offences under regulations. Professor Aughterson advised:

... regulations cannot create criminal or regulatory offences unless permitted by the governing Act, either expressly or by necessary implication.

Section 293 of the Act allows that a regulation may 'provide for an offence against a regulation to be an offence of strict or absolute liability'. That provision assumes the existence of an offence against a regulation and allows the regulation to classify it as an offence of strict or absolute liability. It does not expressly allow for the creation of an offence under the regulations. ...

It follows that, in my view, s 293 of the Act as presently drafted does not allow for the creation of offences under the regulations.

Reference should also be made to clause 126B(2)(h) of the Bill, by which regulations may provide for 'compliance, enforcement and reporting requirements in relation to the scheme'. As drafted, the reach of the sub-clause is unclear, particularly the term 'enforcement'. There is a risk of overreach in the regulations arising from that provision. For example, sub-clause (2)(h) doesn't expressly provide for the creation of offences or the imposition of penalties and arguably it doesn't do so by necessary implication. It could be interpreted, for example, as simply allowing regulations in the nature of administrative steps specific to the scheme, in the nature of or other than those allowed for environmental officers under s 162 and s 163 of the Act. Also, 'enforcement' could refer to the enforcement of a debt payable to the Territory, arising from a failure to pay prescribed contributions under the scheme. Certainly, clause 126B does not clearly enable the regulations to create offences. Also, the fact that there is no specification as to the limits to any consequence or penalty, which might be the subject of an 'enforcement', is indicative that a power to create offences or impose penalties was not intended.⁷⁵

Committee's comments

- 3.63 The Committee notes that the Bill does not provide for offences to be created by regulations. Additionally, the EP Act does not provide a general authority for regulations made under the EP Act to create offences. The Committee further notes that the Minister did not indicate any intention to provide for offences to be created by regulations in his first reading speech, nor does the Explanatory Statement allude to any such intention.

⁷⁴ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁷⁵ Professor Ned Aughterson, *Legal Advice on the Environment Legislation Amendment (Safe Air) Bill 2026*, 20 September 2026, pp. 5-6.

- 3.64 The Committee considers that, should it be intended for offences to be prescribed in relation to future EMSs, the EP Act should be amended to provide a clear and express legislative basis for such offences.

Publication of monitoring data

- 3.65 In his first reading speech the Minister explained that the Bill is intended to provide the:

basis for contemporary, industry-funded monitoring arrangements that will improve data, promote transparency and strengthen public confidence in the environmental regulation of Territory industries.⁷⁶

- 3.66 However, most submitters highlighted concerns regarding the transparency of environmental monitoring data. Many submitters did not perceive the Bill as providing sufficient assurance that data collected under EMSs would be publicly available.⁷⁷ Because of this, some submitters advised that the Bill did not achieve its policy intention of strengthening public confidence in the environmental regulation of industry.⁷⁸ For example, the Environmental Defenders Office told the Committee that:

The NT Government have represented that the Safe Air Bill will establish public monitoring and reporting of specific industrial pollutants for the first time, and that monitoring data will be publicly available online. In his Explanatory Speech, Minister Burgoyne described the Safe Air Bill as delivering transparency and public confidence.

However, the Safe Air Bill does not include a requirement to publish information. Proposed section 126B(2) identifies various matters that the regulations for a particular environmental monitoring scheme *may* address including reporting requirements. This provision does not require monitoring data to be published.

During the Departmental briefing on 31 August 2026, the Committee was advised monitoring data is currently published and it would be expected that this process continue. As previously explained, the NT EPA currently conduct ambient air quality monitoring at three locations and publish real time data on the NT EPA website of air pollutants including carbon monoxide, nitrogen dioxide, ozone, sulfur dioxide, PM₁₀ and PM_{2.5}. As explained in the Departmental briefing, the publication of this information is a current Departmental process and not a legislated requirement.

Specific industrial pollutants, like BTEX, are not monitored and information is therefore not currently published. If public access to monitoring information is an intended and important feature of a monitoring scheme (which it should be), that intention should be reflected in the Safe Air Bill and not left to subsequent policy decisions or operational process.⁷⁹

- 3.67 Similarly, other submitters advocated for a requirement that data should be published in real-time, to enable people to make educated decisions about the quality of air that they may expose themselves to by going to particular sites or locations.⁸⁰ These

⁷⁶ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 19.

⁷⁷ Justin Tutty, Submission No. 1, pp. 1-2; Environmental Defenders Office, Submission No. 4, p. 11; Climate and Health Alliance, Submission No. 7, p. 9, 11; Kathie Rea, Submission No. 9, p. 1; Submission No. 12, p. 2.

⁷⁸ Justin Tutty, Submission No. 1, p. 1; Environmental Defenders Office, Submission No. 4, p. 11.

⁷⁹ Environmental Defender's Office, Submission No. 4, p. 11.

⁸⁰ National Heart Foundation of Australia, Submission No. 2, p. 2; Community Health Air Northern Territory, Submission No. 3, p. 4; Grusha Leeman, Submission No. 6, p. 3.

concerns reflected a focus on the AQMS, rather than the broader powers to establish EMSs proposed in the Bill. For example, Naomi Rea told the Committee that:

Emissions data also needs to be publicly available. Forecast dates and times when emissions and hot venting are planned to occur, needs to be made available to the public in time for people to be able to make informed decisions about their own exposure and the people they are responsible for such as children.⁸¹

- 3.68 The Department advised in the public briefing that they intend to publish the AQMS data:

the current monitoring undertaken in the Darwin airshed is all publicly available on the NT EPA website. The intention is that all new data collected, including monitoring for the new parameters, like BTEX, would also be shown in real time on that website... This Bill allows for cost recovery. As part of that, we could potentially improve the current web interface displaying that information.⁸²

- 3.69 The broader point raised by submitters regarding publishing requirements reflects a question of whether the Bill achieves its policy intent of enhancing transparency and public confidence in environmental regulation. Accordingly, the Committee asked the Department what the rationale was for not including any requirements for data collected under an environmental monitoring scheme to be published. The Department told the Committee that they intended to publish data from the AQMS, but that this may not be appropriate for all future EMSs:

It is expected that environmental monitoring data will be published, and it is intended for the AQMS that data will continue to be published in real time on the existing NT EPA website.

However, other types of monitoring may not lend themselves to this type of reporting. They may involve longer time periods (e.g. measuring impact on vegetation), or complex and hard to interpret data (such as groundwater monitoring).

The appropriate publication requirements would depend on the nature of the environmental monitoring scheme.⁸³

- 3.70 Recognising the policy intent of the Bill, the Committee further asked if there would be any benefits or risks in explicitly providing that the regulations may provide for the publication of EMS data. The Department advised that it would provide them no practical benefits as regulations could provide for this under 126B(2)(i), but that they perceived it could promote community confidence in an EMS. They also told the Committee that the power could be a mandatory feature of regulations without being 'overly burdensome':

There are no apparent practical benefits in the operation of an environmental monitoring scheme because the scope of 126B(2)(i) already allows for this.

⁸¹ Naomi Rea, Submission No. 12, p. 2.

⁸² Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 3.

⁸³ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

However, including an item relating to ‘manner and form of publicising monitoring data’ may improve public confidence. There are no apparent risks if it is discretionary.

DLPE further considers that it would not be overly burdensome to include a non-discretionary requirement to publish data, because this could be satisfied for example by including in the regulations for an environmental monitoring scheme an annual reporting requirement.⁸⁴

Committee’s comments

- 3.71 The Committee acknowledges that the proposed section 126B(2)(i) enables regulations to provide a mechanism for EMS data reporting as a matter necessary or convenient for the establishment, operation or administration of an EMS. However, the Committee considers that the existing provisions do not sufficiently capture the intent of the Bill to promote transparency and enhance community confidence in environmental regulation.
- 3.72 Having examined the concerns of submitters, the Committee considers that transparency and public confidence in the Bill and any future EMS will be enhanced if there are clear provisions regarding public access to EMS data. Accordingly, the Committee recommends that proposed section 126B(2) be amended to explicitly provide that the regulations may provide for the manner and form of publishing environmental monitoring data.

Recommendation 6

The Committee recommends that proposed section 126B(2) be amended to provide that the Regulations may provide for the manner and form of publishing monitoring data relating to an environmental monitoring scheme.

Annual fees for Eni’s Blacktip

- 3.73 The Bill seeks to apply annual licencing fees to the operation of Eni’s Blacktip facility. As the Minister explained in his first reading speech:
- fees are applied to the Blacktip Yelcherr Gas Plant near Wadeye operated by Eni Australia BV. This corrects a current anomaly where this project sits outside of the usual fee requirements. The amendment applies a consistent approach across all operators creating a level playing field.⁸⁵
- 3.74 The Bill seeks to achieve this by amending the *Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005* (the Blacktip Act):
- Clause 7 seeks to insert section 9 to provide that the Waste Management and Pollution Control (Administration) Regulations 1998 (the WMPCA Regulations) have effect as if they specified that the annual fee for a licence to operate an onshore gas plant as part of the Blacktip Gas Project was 0.01 revenue units for

⁸⁴ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 15 September 2026.

⁸⁵ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 19.

each tonne of hydrocarbon the NT EPA estimates is likely to be handled in a 12-month period.

- Consequently, clause 6 seeks to replace the heading of Part 4 to reflect the application of the WMPCA Regulations.
- Further, clause 11(2) seeks to amend regulation 3B of the WMPCA Regulations to insert a note explaining the modification of the WMPCA Regulations by proposed section 9 of the Blacktip Act.

3.75 Additionally, clause 9 seeks to amend Schedule 2 of the *Waste Management and Pollution Control Act 1998* (WMPC Act) to insert a note explaining the existing modification by the Blacktip Act.

3.76 The NT EPA told the Committee that they support the amendment to require Eni to pay annual licence fees for the operation of Blacktip:

the Bill includes Eni Australia's Yelcherr Gas Plant into the annual licence fee regime. This will correct a long-standing anomaly that has excluded Eni until now. The NT EPA supports this amendment.⁸⁶

3.77 The Department explained the effect of these amendments to the Committee, advising that 'Eni will be paying approximately \$16,000 a year when operating.'⁸⁷

3.78 Justin Tutty raised matters relevant to clause (3)(b)(iii)(K) of the Committee's Terms of Reference, which requires the Committee to consider whether a Bill is unambiguous and drafted in a sufficiently clear and precise way. Recounting his difficulty understanding the method by which annual licence fees had been applied to the operation of Blacktip, he told the Committee that the drafting was confusing and required careful reading of the relevant legislation:

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.... 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... It is simply harder to follow than it needs to be.⁸⁸

3.79 Justin Tutty also told the Committee that the Explanatory Statement was not sufficient in its explanation of the amendments.⁸⁹ Despite these concerns, Justin Tutty also acknowledged that 'nothing about [the drafting] is unlawful or concealed' and perceived the notes proposed to be inserted as likely to help readers 'find their way'.⁹⁰

3.80 The Department explained how the provisions in the Blacktip Act relate to the WMPC Act in the public briefing:

The Blacktip regime has standalone legislation that established the facility and regulates the facility. It has a mechanism that reaches into the *Waste*

⁸⁶ Northern Territory Environment Protection Authority, Submission No. 8, p. 2.

⁸⁷ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 4.

⁸⁸ Justin Tutty, Submission No. 1, p. 2.

⁸⁹ Justin Tutty, Submission No. 1, p. 3.

⁹⁰ Justin Tutty, Submission No. 1, p. 2.

Management and Pollution Control Act that then gives the EPA the power to regulate that facility. However, due to the unique interactions between those Acts the annual licence fee has never been applied to that facility, so this is seeking to rectify that anomaly.⁹¹

3.81 As set out in clause (3)(b)(iii)(G) of the Committee's Terms of Reference, the Committee is required to consider whether a Bill imposes obligations retrospectively. As such, it considered the commencement of the Bill and the transitional arrangements regarding the application of annual licensing fees to the operation of the Blacktip facility. The Committee also asked the Department if there was retrospective liability. The Department confirmed that there was not.⁹²

3.82 The Committee notes that, whilst both Part 3 (the application of annual licencing fees to Blacktip) and Part 4 (increases to annual licencing fees for hydrocarbon facilities) commence on 1 January 2027, only Part 4 has transitional arrangements. These specify that the proposed amendments to regulation 3B apply only in relation to fees that become payable on or after 1 January, and that fees payable prior to 1 January 2027 are to be determined by existing regulation 3B. The Committee queried why transitional arrangements were required for Part 4 of the Bill but not Part 3. The Department told the Committee that:

While Part 4 commences on 1 January 2027, the transitional at clause 12 of the Bill was included out of an abundance of caution to make it clear that if an annual fee that is due before the commencement is paid after the commencement, the fee is still calculated at the old rate, not the new higher rate.⁹³

Committee's Comments

3.83 The Committee acknowledges concerns regarding the ease of understanding the relevant legislation. However, the Committee notes that the Bill clearly identifies the respective amendments being made to the Blacktip Act, WMPC Act and the WMPCA Regulations. Accordingly, the Committee considers that the drafting of these amendments is unambiguous and drafted in a sufficiently clear and precise way.

3.84 The Committee is also satisfied that transitional arrangements are not necessary for Part 3 of the Bill.

Annual fees for hydrocarbon facilities

3.85 The Bill seeks to revise the annual fee for hydrocarbon facilities in the NT. As explained by the Minister in his first reading speech:

the Bill addresses a longstanding concern that the hydrocarbon industry's annual licensing fees for processing facilities have not kept pace with the cost of regulation. The Bill amends the annual fee so it is expressed in revenue units for each tonne of hydrocarbons likely to be handled in the plant in a 12-month period. Revenue units are indexed against inflation, so the fee will remain appropriate.

⁹¹ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 3.

⁹² Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 3.

⁹³ Department of Lands, Planning and Environment, *Clarification and advice regarding amendments to the Environment Protection Act 2019, Trans-Territory Pipeline and Blacktip Gas Projects (Special Provisions) Act 2005, Waste Management and Pollution Control Act 1998 and Waste Management and Pollution Control (Administration) Regulations 1998*, (unpublished), 17 September 2026.

This amendment will ensure that hydrocarbon processing facilities contribute a fair and realistic amount to the cost of regulating their operations.⁹⁴

3.86 This is implemented through several amendments to the WMPCA Regulations:

- Clause 11(1) seeks to amend regulation 3B to alter the annual fee for a licence to operate certain premises for processing hydrocarbons to produce, store and/or despatch liquefied natural gas or methanol,⁹⁵ from a fixed fee of \$0.00115 per tonne of hydrocarbon to 0.01 revenue units.
- Consequently, clause 12 seeks to insert transitional regulation 19 to provide that proposed amendments to regulation 3B only apply in relation to annual licencing fees payable after 1 January 2027.

3.87 The Committee notes that the value of the annual licencing fee in revenue units per tonne of hydrocarbon is not equivalent to the existing fixed dollar value per tonne of hydrocarbon. While the existing fee is \$0.00115 per tonne, revenue units for the period 1 July 2026 to 30 June 2027 are \$1.49, meaning that the annual fee is being increased to \$0.0149 per tonne of hydrocarbon.⁹⁶ This is 12.95 times greater than the existing annual licencing fee per tonne of hydrocarbon. The Department explained the increased costs this would place on the licence holders to the Committee, advising that:

The current annual fees for INPEX are \$15,000. The current annual fee for Santos, the DLNG facility, is \$4,200... Santos will now be paying about \$54,000 a year; INPEX will be paying about \$187,000 a year...⁹⁷

3.88 The NT EPA supported the amendments in the Bill, advising the Committee that the existing annual licencing fees were not sufficient to cover regulatory costs:

The Bill also proposes to amend the *Waste Management and Pollution Control Act 1998* and Waste Management and Pollution Control (Administration) Regulations 1998 to increase licence fees for the hydrocarbon industry. The current licence fees in the NT are inadequate to cover the cost of regulating the industry. The NT EPA supports this proposal as it is well overdue.⁹⁸

3.89 Justin Tutty told the Committee that additional fees prescribed by regulation 3B should also be converted to revenue units:

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.⁹⁹

⁹⁴ Hon Josh Burgoyne, Minister for Lands, Planning and Environment, *Draft Daily Hansard – Day 2 – 26 August 2026*, <https://territorystories.nt.gov.au/10070/1046756>, p. 19.

⁹⁵ The annual fee applies to premises that are designed to produce more than 500,000 tonnes annually and 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.

⁹⁶ Territory Revenue Office, Revenue units, <https://nt.gov.au/employ/money-and-taxes/taxes-royalties-and-grants/territory-revenue-office/revenue-units>.

⁹⁷ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 4.

⁹⁸ Northern Territory Environment Protection Authority, Submission No. 8, p. 1.

⁹⁹ Justin Tutty, Submission No. 1, p. 7.

Committee's Comments

3.90 The Committee notes that other annual fees in regulation 3B relate to matters outside the scope of this Bill, such as waste disposal licencing.

Other issues

3.91 Many submitters commented on matters associated with the future AQMS that are outside the scope of the Bill. These included recommendations to:

- amend the licencing regime, including conditions licence holders must meet and in response to the *Darwin Airshed LNG Licence Review*.¹⁰⁰
- provide emissions standards and limits, including concentration rates, restrictions on hot venting, and associated compliance and enforcement mechanisms¹⁰¹
- require the NT to comply with the National Environment Protection (Air Toxics) Measure, including specification of which pollutants are to be monitored and thresholds for investigation.¹⁰²

3.92 In relation to some of these matters, the Department explained their intentions following the establishment of the AQMS under the EMS framework:

Once we establish the air quality monitoring for those additional parameters, we would then be able to see where there is an exceedance against national standards which would then prompt the regulator to investigate what the cause of those exceedances were.¹⁰³

3.93 Submitters highlighted concerns regarding consultation in the development of the Bill or future regulations provided under the Bill.¹⁰⁴ Submitters also raised concerns regarding the timeframe provided for the Committee's submission process or requested that the Committee hold public hearings.¹⁰⁵

Committee's Comments

3.94 The Committee notes that the Bill does not directly establish an AQMS, nor does it seek to provide for emissions limits. Instead, it provides a framework by which EMSs can be established by regulations, including an AQMS. Accordingly, the majority of the Committee considers that these matters raised by submitters are outside the scope of the Bill.

¹⁰⁰ Community Healthy Air Northern Territory, Submission No. 3, p. 4; Environment Centre NT, Submission No. 5, p. 5; Climate and Health Alliance, Submission No. 7, pp. 5-6.

¹⁰¹ National Heart Foundation of Australia, Submission No. 2, p. 2; Community Health Air Northern Territory, Submission No. 3, p. 4; Environmental Defenders Office, Submission No. 4, p. 14; Environment Centre NT, Submission No. 5, pp. 8-9; Grusha Leeman, Submission No. 6, pp. 1-2; Climate and Health Alliance, Submission No. 7, p. 11; Grace Matarazzo, Submission No. 11, p. 1; Naomi Rea, Submission No. 12, p. 1.

¹⁰² Environmental Defenders Office, Submission No. 4, p. 14; Environment Centre NT, Submission No. 5, pp. 5-7; Naomi Rea, Submission No. 12, p. 1.

¹⁰³ Department of Lands, Planning and Environment, Committee Transcript, 31 August 2026, p. 4.

¹⁰⁴ Environmental Defenders Office, Submission No. 4, p. 11, 14; Environment Centre NT, Submission No. 5, p. 8; Climate and Health Alliance, Submission No. 7, p. 11; Kathie Rea, Submission No. 9, p. 2.

¹⁰⁵ National Heart Foundation of Australia, Submission No. 2, p. 2; Environmental Defenders Office, Submission No. 4, p. 13; Environment Centre NT, Submission No. 5, p. 8; Climate and Health Alliance, Submission No. 7, p. 11.

Appendix 1: Submissions Received

Submissions Received

1. Justin Tutty
2. National Heart Foundation
3. Community Health Air Northern Territory
4. Environmental Defender's Office
5. Environment Centre NT
6. Grusha Leeman
7. Climate and Health Alliance
8. Northern Territory Environment Protection Authority
9. Kathie Rea
10. Name withheld
11. Grace Matarazzo
12. Naomi Rea

Note: Copies of submissions are available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/73-2026>

Appendix 2: Public Briefing

Darwin – 31 August 2026

Department of Lands, Planning and Environment

- Tess Cole-Adams: Executive Director, Environmental Regulation Division
- Sarah Gibbs: Director Legal Services, Environmental Regulation Division
- Julia Schult: Director Environmental Regulation, Environmental Regulation Division
- Solomon Gaturu: Director Regulatory Strategy and Maturity, Environmental Regulation Division

Note: Copies of briefing transcripts are available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/73-2026>

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Dissenting Report – Justine Davis MLA

Justine Davis MLA

Independent Member for Johnston

Alawa - Jingili - Millner - Moil

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6/10/2026



Dear Chair and Members of the Legislative Scrutiny Committee

Re: Environment Legislation Amendment (Safe Air) Bill 2026 (Serial 73): Dissenting Report

I thank the Committee and the Secretariat for their work on this inquiry. I also thank the 12 people and organisations who made submissions in a very short time frame. 11 raised serious concerns. Only the NT Environment Protection Authority supported the Bill in full. One submitter asked for confidentiality because their job could put them at personal risk.

Every submitter supported the aim of better air quality in the Territory. Many asked for the Bill to set up an air quality monitoring scheme directly rather than simply give the Government a power to create one later through regulation. The Scrutiny Committee has recommended amendments that would improve the Bill, but they do not address its central problems.

I dissent from the Majority report and recommend that the Legislative Assembly **NOT PASS** the *Environment Legislation Amendment (Safe Air) Bill 2026* (Serial 73) in its current form.

If the Assembly is to pass the bill, I recommend that the Parliament:

- 1) adopt the Committee's Recommendations 2, 3, 4 and 6;
- 2) amend the Bill in accordance with my Recommendations 1 to 10; and
- 3) ensure that the Act itself establishes the minimum standards, protections, transparency and accountability necessary for an effective air quality monitoring scheme.

I outline the reasons for my dissent below.

1. I do not support this Bill because it is discretionary framework legislation

Our job as a Scrutiny Committee is to test whether laws are:

- Effective;
- Proportionate; and
- Evidence-based.

In this instance, our job must also be to consider whether the proposed law gives proper regard to the role of Parliament.



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Important rights and decisions – such as the right to clean air – should be determined by Parliament, not simply handed to the executive via discretionary framework legislation to determine later.

Framework legislation is a law that gives the Government a power to make rules later, rather than the Parliament making the rules itself.

The Bill does not set up a monitoring scheme. It allows the Government to set one up later by regulation. Proposed section 126B(2) lists what regulations "may" cover: the scheme's purpose, area, administration, who pays, how much, accounting, enforcement and reporting.

Every one of these items is optional. I.e., discretionary. That means regulations could require industry to pay for a monitoring scheme without the Act itself saying what the scheme is for, what it must monitor, who will run it, how it will operate or how the results will be reported.

The Committee's legal counsel, Professor Aughterson, advised

"It is not clear why most if not all of the matters at sub-clauses (a) to (i) are not mandated should a scheme be established; in particular, matters (a) to (d)."

When the question of why these matters were optional was raised with the Department, it did not provide a reason. The Department agrees that all these matters would be needed – ie mandatory (except naming the Administrator and setting up a fund). Despite this, they could not explain under questioning why such matters were optional. So, if such matters are necessary, they should be included in the law, not optional

This is not only my view. The Chair's report relies on guidance from the Senate Standing Committee for the Scrutiny of Bills. That guidance says that leaving significant elements of a scheme to delegated legislation can limit Parliament's ability to oversee it. It lists matters that generally belong in an Act rather than in regulations.

Several apply directly to this Bill:

- The imposition of levies, which here means the contributions industry must pay;
- Key elements of new policies;
- Significant penalties, and obligations to do or not do things; and
- Procedural matters that go to the essence of a scheme.

The same guidance says a wish for administrative flexibility is not, by itself, enough to justify leaving significant matters to regulations.

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Under Sessional Order 7 (3)(b)(iii) and (iv), this Scrutiny Committee must consider:

- Whether administrative powers are sufficiently defined and subject to review;
- Whether legislative power is delegated only in appropriate cases and to appropriate persons; and
- Whether the Bill sufficiently subjects delegated power to the scrutiny of the Assembly.

This Bill does not meet those tests.

The basic principle should be straightforward: the Act should establish minimum protections. Regulations can add to those protections or strengthen them. They should not be able to remove them or decide whether they exist at all.

The Committee's majority accepted the framework approach for two main reasons.

First, it considered that compulsory requirements could be "overly prescriptive". But as noted above the Department itself says that most of these matters are necessary for a successful scheme. Requiring a scheme to have a purpose, operate properly, identify who pays and provide for accountability is not excessive prescription. It is basic legislative accountability.

Second, the Committee relied on the Assembly's power to disallow regulations. Disallowance is not the same as parliamentary scrutiny of the substance of a law; once regulations are made, the Assembly can accept or reject them. It cannot rewrite them.

We are therefore being asked to hand over the power before Parliament has seen how that power will be used. The Department said drafting had begun but confirmed at the public briefing that consultation was with industry only.

The Majority Committee report acknowledges that the Bill "provides little guidance on the face of the Bill". That is precisely the problem. The Committee says its recommendations "more closely define powers or provide additional safeguards". But they address only who administers a scheme, who pays, review of contributions, Gazette notices and publication. They do not address the central question of what a scheme must contain.

The Bill leaves the most significant parts of the scheme to future regulations. These include:

- The pollutants to be monitored;
- Where monitors are placed;
- How often and by what method monitoring occurs;
- How and when data is published; and
- How contributions are calculated.

These are not technical details. They are fundamentals. They are the basic parameters which are necessary for the law to do what it says, which includes providing safe air for the community. In

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other words, these details determine whether the scheme actually protects the community and provides meaningful transparency.

If the Act leaves all these matters open, Parliament is being asked to approve an air quality monitoring scheme without establishing the protections that give the scheme its purpose.

Under the Bill as drafted, regulations could provide for only a few pollutants to be monitored. They could place monitors where they tell the public little. They could allow data to be published months late. They could set contributions that bear no relation to the cost of monitoring. Each of these would be lawful under the Bill. The result could look like a comprehensive air monitoring system without having any of the safeguards that make it so.

The Act should be clear about what will be monitored, where, and how often. It should outline who controls the information, when it must be published, who pays, and how that payment is worked out.

These fundamental matters should sit at the centre of the Act. Regulations should then provide further procedural detail, not make laws which affect the rights and safety of people and community, which is properly the role of Parliament.

RECOMMENDATION 1

That the Bill establish the air quality monitoring scheme directly, with minimum protections that regulations may add to but not reduce.

RECOMMENDATION 1A

If the Assembly will not do that, then at a minimum:

- (a) proposed section 126B(2) should say regulations must (not "may") provide for the scheme's purpose, area, operation and administration; who pays and how the amount is worked out; accounting and auditing; enforcement; and reporting; and**
- (b) matters that are genuinely optional, such as naming a particular administrator or setting up a fund, should move to a separate subsection 126B(3).**

2) I do not support that the detail of Air monitoring is "out of scope" of the Act

The Committee heard that setting emission caps, hot venting limits, BTEX standards, and breach penalties are "*out of scope*" because the Bill is strictly an enabling head of power for cost-recovery based on the Zephyr ambient air review, while emission limits belong in separate NT EPA licences under the *Waste Management and Pollution Control Act 1998* (NT).

The Committee majority has accepted this view.

That describes what the Bill does. It does not answer the concern.

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That describes what the Bill does. It does not answer the concern.

The Minister told the Assembly in his first reading speech that the Bill would "improve data, promote transparency and strengthen public confidence in the environmental regulation of Territory industries". He said growth "must go hand-in-hand with upholding environmental standards and public confidence and that is what this Bill delivers".

But the Bill does not require data to be published. It sets no air quality standard to uphold. It establishes no emission limit. It does not say what level of pollution is a breach. It does not say what will be monitored, to what standard, or where the results will be published.

The Committee says its recommendations "better align the statutory framework outlined in the Bill with the policy intention as described by the Minister". In other words, the Committee's recommendations are needed because the Bill does not deliver what the Minister said it would.

A Bill called "Safe Air" tells the community that the law will make its air safe. A name sets an expectation, and the law should meet it. Without a clear standard, no one can say what unsafe air is, and no one can judge what the monitoring results mean.

It is difficult to reconcile the title with a Bill that contains no enforceable air quality standard, no emission limits, no hot venting limits and no clear penalties for breaches. You cannot guarantee "safe air" if the law does not establish what unsafe air is.

The Government chose to draft a framework Bill with very little detail. It cannot leave the safeguards out of the Bill and then argue that they are out of scope because they were left out. That is circular.

The Committee also treats these matters as beyond its reach. In fact, they are exactly the kinds of issues the scrutiny committee should consider. Sessional Order 7 asks whether the Assembly should pass the Bill and whether it should amend it. The Committee's own recommendations add content that was not in the Bill.

The Department wants the Bill limited to ambient monitoring, which measures the quality of the air across an area. Ambient monitoring is important. But it can tell us that something has gone wrong without showing us which facility caused it.

Submissions 2, 3, 4 and 5 to the scrutiny committee make this point. Without monitoring at the source of emissions, and limits on what individual facilities may release, the regulator may not be able to attribute pollution or enforce compliance. The Heart Foundation, the Climate and Health Alliance, the Environmental Defenders Office and others asked for emission caps, hot venting limits and clear thresholds to be set in law. The Heart Foundation said air standards must be in law to protect heart health.

Submitters said that unmonitored hot venting and flaring cause sudden spikes in air toxics (Submissions 2 and 11). Monitoring that cannot connect a spike to its source records a problem

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without providing the means to stop it happening again. A monitoring system should not only tell the community that pollution occurred. It should show what happened, who was responsible, whether a legal standard was breached and what happens next.

Environment Centre NT and the Climate and Health Alliance said the Bill does not implement the Darwin Airshed LNG Licence Review. The Department confirmed that it does not.

Leaving air standards and venting limits to individual licences, and to departmental discretion, has not provided sufficient protection. These protections should be set in the Act.

The Department says enforcement can be dealt with in future regulations under section 126B(2)(h). The Committee's legal counsel advised that "*clause 126B does not clearly enable the regulations to create offences*". He also advised that the *Environment Protection Act 2019* (NT) does not allow offences to be created by regulation. The Department's own written advice suggested that future schemes might include offences.

The Committee agrees with the legal advice and says the Act should be amended if offences are intended. But it makes no recommendation. That leaves a gap.

This is a real risk. If the Act does not clearly give the power to create offences, any penalty created later by regulation may be open to challenge in court. A penalty that cannot be enforced does not protect anyone. The Act should state clearly what happens when a threshold is breached.

The Department also said the only enforcement action it has considered for the air quality scheme is recovering unpaid amounts as a debt. If that is all that is intended, section 126B(2)(h) should say so.

Submitters were clear about what the Act itself should set. This is not an attempt to write the regulations for the Government. It is about setting the minimum requirements that make a scheme meaningful. The Act should provide for:

- A minimum list of priority pollutants, including vocs and BTEX;
- Minimum rules for where monitors go, including near industry, homes, schools, childcare centres and hospitals;
- Both source and ambient monitoring;
- Monitoring by accredited people using nationally consistent methods; and
- NT EPA custody of the data for the public benefit.

These tell the public what will be measured, where, how often and who holds the results. This is what submitters said they expect from a "Safe Air" Act.

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RECOMMENDATION 2

That the Bill require every air quality monitoring scheme to include, as a minimum:

- (a) continuous monitoring of BTEX compounds and other criteria pollutants, with a list of priority pollutants that includes VOCs;
- (b) rules for where monitors are placed, including near industry, homes, schools, childcare centres and hospitals;
- (c) monitoring of both emission sources and ambient (surrounding) air;
- (d) a minimum monitoring frequency and approved monitoring methods, so that results can be compared over time and between sites; and
- (e) custody of the data by the NT Environment Protection Authority.

RECOMMENDATION 3

That the Government bring forward enforceable air quality thresholds and emission limits for BTEX.

That the Bill also include requirements for the availability and operation of pollution-control equipment, including minimum periods of operation, together with limits on the duration of hot venting and routine flaring, so that monitoring results can be measured against a clear standard.

RECOMMENDATION 4

That the Act include an express power to create offences for breaches of air quality thresholds and emission limits, rather than leaving this to section 126B(2)(h).

The Act should set out how responses escalate, what triggers an investigation, and penalties that remove the financial benefit gained from a breach.

Enforcement under section 126B(2)(h) should be limited to recovering unpaid contributions as a debt.

3. If the Bill is to pass, I support the Committee's recommendations but they need to go further

For the reasons outlined above I **do not support the Bill in its current form.**

If the Assembly nevertheless proceeds with it, I support the Committee's Recommendations 2, 3, 4 and 6. I do not support Recommendation 5 in its current form.

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The Committee's recommendations are useful, but they need to be strengthened if the Bill is to provide the accountability and transparency that Territorians have been promised.

Administrators (Committee Recommendation 2)

The Committee recommends that a company required to pay for a scheme should not run it. I support that principle, but it does not go far enough. The recommendation does not clearly deal with associates or contractors, and it does not establish qualifications for an administrator. The Department told the Committee that schemes would be “government-owned and government-operated”. The Bill should say so ; the person or body administering a scheme should have no financial or other interest in the industry being monitored.

RECOMMENDATION 5

That administrators be limited to a government authority or a qualified person under section 4 of the Act, and exclude anyone with an interest in an affected industry, including associates and contractors of contributors.

Review of decisions (Committee Recommendation 4).

The Committee recognised that judicial review is not enough. Judicial review considers whether a decision is lawful. It does not substitute a better decision on its merits. Merits review generally considers whether the right or preferable decision was made.

I agree with the Committee that there should be a stronger review mechanism, but the proposed internal review process does not go far enough.

It does not clearly establish who conducts the review, how quickly it must occur, or whether it applies to important compliance decisions. The Department has suggested that the amounts involved will be small. But the Bill sets no cap, and the Committee report does not provide an estimate. People should have confidence that decisions about what they are required to pay can be independently reviewed.

RECOMMENDATION 6

That decisions about what a person must pay be open to independent merits review by NTCAT. At a minimum, review should be by a different decision-maker, within a set timeframe. Affected residents and community groups should be able to seek review of major decisions that affect them.

Naming who must pay by Gazette notice (Committee Recommendation 5)

This lets the Minister name who must contribute by a notice in the Gazette, the Government's official notice. I do not support it as it stands. The Department asked for this power after the Bill was introduced, saying the need became clear when it began drafting regulations. That suggests

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the Bill was introduced unfinished. It also adds another layer of delegation. A Gazette notice is not a regulation, so the scrutiny the Committee relies on may not apply.

RECOMMENDATION 7

That if the Minister is given power to name contributors, or to set the method of calculating contributions, by Gazette notice, every notice be tabled in the Assembly and open to disallowance.

Publishing data (Committee Recommendation 6)

The Committee recommended that the Minister **may** publish monitoring data. I support publication, but a 'may' is not enough. The Department says the existing power already allows publication, and that it intends to publish new air data in real time. If that is the plan, the Bill should require it.

A public right to know should not depend on whether a future Minister chooses to exercise a discretionary power. Without a clear duty to publish, people seeking information may continue to face Freedom of Information processes and fees. One submitter reported fees of more than \$1,200.

If the Government is collecting air quality data to protect the public, that data should belong in the public domain.

RECOMMENDATION 8

That monitoring data be:
published online and free of charge;
subject to a maximum publication delay set in the Act;
published in real time for ambient air monitoring where feasible; and
made available in raw form so that short-term pollution spikes are not hidden by averaging.
Licence holders should also be required to publish their own monitoring results, consistent with the approach identified by submitters in relation to New South Wales.

Fees, how contributions are calculated, and consultation.

The principle that industry should pay for monitoring is reasonable. This is consistent with longstanding environmental norms, such as the polluter pays principle. If industry is paying, there must also be transparency about how those contributions are calculated and spent.

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The Bill indexes hydrocarbon fees to inflation but leaves other fixed-dollar fees in regulation 3B to lose value over time. The Committee considers this out of scope, but the Bill already amends regulation 3B. The public should be able to see:

- What each operator contributes;
- How that amount was calculated;
- What the money is spent on; and
- Whether any surplus remains.

The Act should also establish the basis for calculating contributions rather than leaving that entirely to future regulations.

RECOMMENDATION 9

That the Act establish the basis for calculating contributions so that they reflect both the cost of monitoring and the contributor's impact on air quality, consistent with the Committee's Recommendation 3.

That all remaining fixed-dollar fees in regulation 3B be indexed.

That each operator's contribution, the basis on which it is calculated, and how the money is spent be published.

Any surplus should remain within the scheme.

Draft regulations should also be published for public comment before an air quality monitoring scheme is established.

In summary

I dissent from the Majority report and recommend that the Legislative Assembly **NOT PASS** the *Environment Legislation Amendment (Safe Air) Bill 2026* (Serial 73) in its current form.

If the Assembly is to pass the bill, I recommend that the Parliament:

- 1) adopt the Committee's Recommendations 2, 3, 4 and 6;
- 2) amend the Bill in accordance with my Recommendations; and
- 3) ensure that the Act itself establishes the minimum standards, protections, transparency and accountability necessary for an effective air quality monitoring scheme.

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Conclusion

Territorians have been told this Bill delivers safe air. It will not do that.

They are entitled to a law that says what will be measured, who will measure it, who will pay, and where the results will be published. They are also entitled to know what happens when the limits are broken.

These are not matters that should be left entirely to future regulations. They are matters for Parliament.

If this Bill is going to be called the **Safe Air Bill**, the law should tell Territorians what safe air means. And it should say what happens when safe air standards are not met.

Parliament should settle those questions **before the Bill is passed, not afterwards.**

A handwritten signature in black ink, consisting of a large, stylized capital 'J' followed by a horizontal line extending to the right.

Justine Davis
Independent Member for Johnston