

# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## SOCIAL POLICY SCRUTINY COMMITTEE

### Northern Territory Environment Protection Amendment Bill 2018

#### RESPONSE TO QUERIES

The Scrutiny Committee, via email on 24 September 2018, has sought further information from the Department of Environment and Natural Resources. The Department provides the following responses to the Committee. The Department authorises the publication of this information.

The Department's response appears below each of the Committee's questions which are replicated in full.

#### **Proposed Section 24C – Publication**

1. *Can you please clarify why the Minister is not required to table the Statement of Intent in the Legislative Assembly in a manner similar to that provided for under s39 (3)(a) of the Government Owned Corporations Act, thereby ensuring that the Statement is made public in a timely manner.*

It was not considered necessary for the legislation to prescriptively require the Minister to table the Statement of Intent as this is an instrument of the NT EPA and is published by the NT EPA. The legislation would not however preclude the Minister from tabling the Statement of Intent should they so choose.

If the Minister determined to table the Statement of Intent, usual processes would be followed consistent with the timing for tabling other documents prepared under the Act which would be within 6 sitting days of it being accepted by the Minister.

2. *Was any consideration given to including a specific timeframe within which the EPA must make the Statement of Intent public once approved by the Minister?*

This section requires the NT EPA to publish the statement 'as soon as practicable' after it has been accepted by the Minister.

While consideration was given to including a specific timeframe in this section it was noted that there are administrative processes associated with publishing information and that imposition of a specific timeframe would reduce flexibility in this process.

### **Proposed Section 25AA(1)**

1. *It has been suggested that the phrase ‘the EPA considers relevant to the advice or report’ at the end of this subclause is superfluous. How would the operation of this clause be affected if this phrase were removed?*

The phrase “the NT EPA considers relevant to the advice or report” was included in recognition that not all principles would be relevant to all advices or reports prepared by the NT EPA. For example, the principle contained at proposed section 25AA(2)(e) regarding improved valuation, pricing and incentive mechanisms would not be relevant to a report prepared under section 28 which discussed the environmental quality of a region.

The effect of removing this phrase would be to require the NT EPA to consider principles that are not relevant to the advice or report being prepared.

### **Proposed Section 29B – Advice of NT EPA on specific matters**

1. *Can you clarify why the Bill does not require the EPA to have regard to principles of ecologically sustainable development when providing advice or a report to a Minister under Division 2?*

The new proposed Division 2 of Part 3 establishes powers for Ministers to request the NT EPA provide advice on specific proposals, policies, plans or other measures to manage the environmental impacts of development.

This Division is specifically designed to implement Government’s commitments as part of the response to the Final Report of the Scientific Inquiry into Hydraulic Fracturing by ensuring that the Minister may request advice from the NT EPA regarding environmental management plans (EMPs) prepared under the Petroleum (Environment) Regulations.

Although this was the imperative for the new Division, the Division was drafted to have a broader and more flexible application, rather than limiting it to petroleum related matters or EMPs.

The Division does not require the NT EPA to consider the principles of ecologically sustainable development (ESD) outlined in proposed section 25AA because where the NT EPA is providing advice for the purposes of another piece of legislation, that legislation may require the decision maker to take into account specific matters, including principles of ESD which may be expressed differently to the NT EPA Act.

This is the case in relation to EMPs prepared under the Petroleum (Environment) Regulations. Those Regulations articulate the principles of ESD in regulation 4. Although the principles cover the same matters, they are expressed in slightly different language.

The exclusion of a specific obligation for the NT EPA to consider the principles of ESD under Division 2 avoids the NT EPA being potentially obliged to consider multiple expressions of the principles in preparing its advice under Division 2.

It should be noted that this would not prevent the NT EPA from considering those principles in preparing its advice, and further that the NT EPA as a matter of practice considers the principles in performing each of its powers and functions.