

17 April 2019

Economic Policy Scrutiny Committee  
Legislative Assembly of the Northern Territory  
Parliament House  
Darwin, NT 0800  
By email: [EPSC@nt.gov.au](mailto:EPSC@nt.gov.au)

Dear Chair and Committee members

**Submission on Water Legislation Miscellaneous Amendments Bill 2019**

The Environmental Defenders Office (NT) Inc (**EDONT**) welcomes the opportunity to make a submission to the Committee on the *Water Legislation Miscellaneous Amendments Bill 2019 (the Bill)*. EDONT is a community legal centre specialising in public interest environmental law. We regularly advise and represent clients on issues relating to environmental regulation and water law. We are widely respected for our expertise and are regularly invited to participate in policy and law reform processes as a key stakeholder.

In this submission, we comment on the following two matters:

- The Bill's proposed removal of an existing requirement that a 'notice of intention to make water extraction licence decision' be published in a newspaper circulating throughout the Territory (Bill clause 5), and
- The Bill's provisions relating to renewal of water extraction licences (Bill clause 13).

*Notification requirements (Bill clause 5)*

We do not object to the removal of the mandatory requirement that a notice be published in a Territory-wide publication in s71B of the Water Act (**Act**) (which de facto requires publication in the *NT News*), so long as this requirement is replaced with an alternative approach that ensures the notice remains easily accessible to the general public. Our strong view is that the notice must be published on a government website, in addition to mandatory notification in a locally circulated newspaper.

With the recent expansion of water extraction licensing to extractive industries like fracking and mining, there is, more than ever, a strong public interest in ensuring all interested members of public have access to licence application notices and can participate in the decision-making process.

While we acknowledge that the Department of Environment and Natural Resources (**DENR**), in practice, publishes water extraction licence notices on its online water licensing portal, there is no legislative requirement that it does so. It is essential that this obligation be enshrined in legislation, to ensure that this important participatory right is given the force of law and is protected from arbitrary policy changes in the future<sup>1</sup>. This will ensure the right to participate in the water licence decision-making process is implemented in a way that genuinely facilitates public participation.

We also take this opportunity to strongly submit that s71B should require that the licence application itself (including any supporting documentation, such as hydrological studies that accompany it) must

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<sup>1</sup> We also note that there are other requirements under the *Water Act* and *Water Regulations* that require public notice to be given around certain applications (e.g. clauses 6, 7 of the Regulations). In our view it would be appropriate that each of these provisions to also have a mandatory requirement for online publication.

also be published online, via the notice. Any personal information in an application could be redacted to ensure privacy obligations are respected.

While s71B currently requires certain information to be publicised in the notice, the ability of the public to understand a proposal and its environmental context, and make an informed comment, is seriously undermined if the application document itself and any supporting documentation such as scientific reports about the subject water source are not also made available. It is artificial to provide the right of public comment (s71B(4)) without simultaneously providing access to sufficient information to enable that right to be exercised in an informed manner. It is essential that this information is published online to ensure there is easy and equal access to that information for any interested person or group, regardless of location.

To implement our recommendations, we suggest that s71B could be amended as follows:

**71B Notice of Intention to make water extraction licence decision**

.....

(2) *The Controller must publish the notice:*

- a. *in a newspaper circulating in the general locality to which the application relates, and*
- b. *on an appropriate government website.*

*(2A) The Controller must also publish, on an appropriate government website:*

- a. *the application for a water extraction licence and any supporting documentation submitted with the application, and*
- b. *any additional documents or information considered by the Controller to be relevant the application.*

(3) *The notice referred to in (2) must include the following information:*

.....

*(b) (vii) the address of the government website where the application, and any supporting documentation associated with the application, can be accessed.*

.....

In our view, these amendments would be consistent with the intention expressed in the Minister's second reading speech which emphasises the need to modernise the legislation and improve administrative processes, while also supporting and strengthening the critical public participation rights included in the *Water Act*.

*Licence renewals and application of Part 6A (Bill clause 13)*

The Bill proposes extending the period within which a renewal application for a licence can be made to 6 months (from one month). We have no concerns about this specific change in the context of the existing provision. However, our consideration of this amendment has identified that it is unclear whether water extraction licence renewal applications are subject to Part 6A of the *Water Act* (i.e. the public participation provisions for licence decision-making).

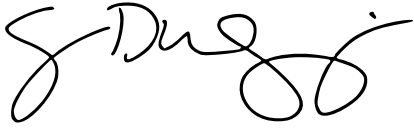
Given our understanding that many areas in the Territory may already be overallocated in terms of sustainable extraction levels or at risk of being so, and considering the future context of climate change and increasing environmental stress and competing water uses, it is essential the proposed renewal of water extraction licences are subject to the same levels of transparency and accountability as new licence applications, especially as they are generally granted for 10 year terms.

Although we consider that the Department needs undertake a broader review of the way the Act and Regulations deals with licence renewals through its water regulatory reform program, in the

meantime we strongly submit that this Bill should be amended to provide that Part 6A of the Act applies to applications to renew water extraction licences made under clause 15 of the Regulations.

Yours sincerely

**Environmental Defenders Office (NT) Inc**

A handwritten signature in black ink, appearing to read 'G Duggin', with a stylized flourish at the end.

Gillian Duggin

**Principal Lawyer**