



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Northern Territory Environment Protection Amendment Bill 2018

11.30 am, Monday, 10 September 2018

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine

Witnesses:

Joanne Townsend: Chief Executive Officer, Department of Environment and Natural Resources

Karen Avery: Executive Director, Environment Policy and Support, Department of Environment and Natural Resources

Kathleen Davis: Director Environment Policy, Department of Environment and Natural Resources

**NORTHERN TERRITORY ENVIRONMENT PROTECTION
AUTHORITY AMENDMENT BILL 2018**

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Madam CHAIR: Ladies and gentlemen, we will kick off the next public briefing a few minutes early. The public briefing is on the Northern Territory Environment Protection Authority Amendment Bill 2018. I welcome to the table to give evidence to the committee representatives from the Department of Environment and Natural Resources: Joanne Townsend, Chief Executive Officer; Karen Avery, Executive Director, Environment Policy and Support; and Kathleen Davis, Director Environment Policy.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask you to state your name for the record, and the capacity in which they appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Could you please now state your name and the capacity in which you are appearing?

Ms TOWNSEND: Jo Townsend, CEO, Department of Environment and Natural Resources.

Ms AVERY: Karen Avery, Executive Director, Environment Policy and Support, Department of Environment and Natural Resources.

Ms DAVIS: Kathleen Davis, Director Environment Policy, Department of Environment and Natural Resources.

Madam CHAIR: Thank you very much. Ms Townsend, would you like to make an opening statement on the legislation?

Ms TOWNSEND: Madam Chair and members of the committee, the Northern Territory Environment Protection Authority Amendment Bill introduces amendments to the *Northern Territory Environment Protection Authority Act*—or the NTEPA.

Before I address the amendments in detail, I will clarify the purpose of the *Northern Territory Environment Protection Authority Act*. The Act is what is referred to as establishing legislation. It establishes the NTEPA as an independent authority, sets the objectives of the authority and provides for matters like the appointment and termination of its members.

The NTEPA, or authority as opposed to the Act, has three primary functions currently. That is, to conduct environmental impact assessments, to regulate the impact of waste and pollution on the environment, and to provide strategic advice on environmental issues. The authority gets most of its powers from what is known as its enabling legislation. In terms of impact assessment, the enabling legislation is the *Environmental Assessment Act*, while for waste and pollution the enabling legislation is the *Waste Management and Pollution Control Act* and the *Environment Protection (Beverages, Containers and Plastic Bags) Act* which, as its name suggests, establishes our container deposit scheme.

The only powers the Act gives the authority are what we call Part 3 advice powers. As this suggests, these are the powers that enable the EPA to give the minister advice about emerging environmental issues, environmental policy and legislation and management.

Why are these amendments required? The *NTEPA Act* commenced in January 2013. Since its introduction, some minor issues have been identified with the Act, including areas that could be clarified or improved.

Before talking about the amendments in detail, I acknowledge that the current government has made a number of commitments to improving the environmental regulatory framework. Part of this commitment is to develop a new *Environment Protection Act* which will provide for a new environmental impact assessment and environmental approval system, as well as improvements as to how we manage waste, pollution and the environmental impacts of mining in the Territory.

In the department, we refer to this as the environmental regulatory reform program. Over the last couple of years, the program has been looking specifically at improvement to the impact assessment and environmental approval system and we hope that we will be able to start consultation on draft legislation to introduce that new system soon.

How do these amendments relate to that regulatory reform program? The amendments included in this bill have been developed as part of a regulatory reform program and build on the experiences of the department in administering the Act over the last five years. The amendments in this bill can be grouped into the following themes: improving governance; giving the authority powers to provide advice in relation to the environmental management plans prepared under the Petroleum Environment Regulations to meet the government's hydraulic fracturing commitments; giving the authority new responsibilities to undertake reviews of the environmental management system; and improving flexibility in the appointment of its members.

Consultation on environmental reform has a long history in the Northern Territory, and in relation to impact assessment dates back some 10 years to when the former EPA started looking at improvements to the assessment system. General and specific consultation in relation to this government's environmental reform commitments have been ongoing since late 2016 and has included a public discussion paper released in May 2017.

The clear message from key stakeholder groups in the community is there is a lack of understanding about the roles of different players in the environmental management system, including the NTEPA and government departments, and that people thought the governance of the EPA could be improved.

One of those improvements proposed in this amendment bill is a new requirement for a statement of intent. The bill introduces new requirements for the EPA to provide a statement of intent, which it will prepare in consultation with the minister. A statement is modelled on a similar process undertaken between the Tasmanian EPA and their Environment minister, which has been well received by stakeholders in that state because it is a means by which the EPA can more clearly and transparently state its proposed activities for a coming period. It is also a way for the EPA to be more accountable to the community, as it will report on its achievements against the statement as part of its annual reporting obligations.

We have also proposed improved clarity on its advisory and oversight role. The government has announced some changes to the role of the EPA, which will be introduced incrementally as part of the environment reform program. The first of these changes are included in this bill and give the power a new power to undertake systemic review of the environmental management system in what can be referred to as a quality assurance role.

Also, as I mentioned, it will give the authority power to provide advice related to hydraulic fracturing activities for when the Minister for Environment and Natural Resources is considering the approval or otherwise of an environmental management plan. Both of these amendments will also result from government's response to feedback received through the extensive public consultation process as part of the hydraulic fracturing inquiry.

At the same time, we have taken the opportunity to provide some more direction and clarity to the authority about ecologically sustainable development, or ESD. The Act is interesting in that one of the authorities' objectives is to promote ESD, but the Act does not give much guidance on what the EPA should be considering in fulfilling that obligation. The amendments identify the principles of ESD that the EPA must consider when providing its advice to the minister.

The drafting of these principles is consistent with the approach adopted in most Australian jurisdictions when implementing their commitments under the Intergovernmental Agreement on the Environment from 1992. While ours are drafted differently, they are consistent with the matters addressed by the principles incorporated into the Territory's Petroleum (Environment) Regulations.

This amendment will give the EPA more guidance in this area and is another amendment that directly responds to concerns raised about the Act, particularly by environment groups, through the department's consultation activities.

The final group of amendments relate to the appointment of members to the NTEPA and matters associated with member appointments. These amendments meet government's commitment to appoint two additional members to the authority with experience in hydraulic fracturing, but they have also been written in a way to be flexible to emerging needs in terms of skills and experience. The amendments as drafted introduce flexibility by identifying a minimum of four and maximum of seven members, giving the ability to appoint the promised two additional members.

The NTEPA currently has five members appointed by the administrator and the Chair of the NT Planning Commission. The Act already identifies a broad range of skills and experiences that are required for an effective and functioning EPA, and I refer the committee to section 10 of the Act if that is an area you wish to look at in more detail.

We have also taken the opportunity to introduce some additional flexibility in the appointment of members, including temporary appointments. These amendments will make it easier to appoint a temporary member when an appointed member is unavailable for an extended period of time, for example, due to illness. The minister is given the power to make these appointments, which reflects the minister's powers to appoint a temporary chairperson. We have put a 12-month limitation of a temporary appointment because any absence beyond this period suggests that the member is really not available and should resign or be terminated.

It is important to note that these amendments do not reflect concerns with the authority or difficulties experienced with the current NTEPA, rather, they are measures that are being introduced as part of improvements and building on

experiences in other jurisdictions where difficulties with the membership of independent authorities or boards have arisen.

In summary, in developing these amendments, we have responded to feedback received through a range of public consultation processes. We have also provided the members of the NTEPA with copies of the draft bill throughout the drafting process. Their comments on those drafts were incorporated before the bill was finalised. In short, this bill is just the first step in a much broader range of environmental reforms that will be coming before parliament.

As I mentioned, the *NTEPA Act* is the establishing legislation and the greatest impact of these amendments from an operational day-to-day perspective is on the EPA, which will have additional governance obligations and matters to consider when providing advice and of course, its new responsibilities as an assurance monitor.

More broadly, however, the amendments are part of creating an improved environment regulatory framework and ensuring the EPA has the capability and capacity to continue to provide expert advice and information to the minister, which in turn will improve the Territory's environmental outcomes. My colleagues and I would be very happy to receive questions from the committee.

Madam CHAIR: Thank you very much. I will now open it up to the committee for any questions.

Ms NELSON: I have a question. The amendments that are being proposed for this bill—it does not have any effect whatsoever on the independence of the EPA, correct?

Ms TOWNSEND: Correct.

Ms NELSON: They are not accountable to the minister, is that right?

Ms DAVIS: The EPA cannot be directed by the minister. That is very clear in the Act. All the amendments that are being proposed do not change that situation. That does not mean that the EPA is not accountable to the minister and Territorians in general in the way they conduct their business.

Ms NELSON: Okay. I just wanted to clarify that on record. Thank you.

Madam CHAIR: Jo, I think you answered the questions I had. There were a couple of others that I had. In regards to the consultation in the lead up to this bill, what was that consultation process and who was consulted?

Ms AVERY: We put out a discussion paper last year which was part of the broader environmental regulatory reform program. It included in that discussion paper proposed changes to the *NTEPA Act* that could improve governance and so forth. That went out publicly and we had 27 submissions made in relation to that from a broad range of key stakeholders. In addition to that, there has been ongoing consultation of a more informal nature where key stakeholders including the NTEPA, environment groups and other industry groups.

Madam CHAIR: Excellent. Jo, you mentioned that the environment reform has allocated extra governance responsibilities to the NTEPA. Did that also come with additional resources?

Ms TOWNSEND: The change in responsibility for the NTEPA is two-fold. One is its responsibility to undertake the quality assurance role. That is its ability to undertake more systemic reviews of how the environmental management system is operating. They will no longer be a hands-on regulator but will have this larger oversight role.

The other change is the one that arises from the government's acceptance of the Independent Scientific Inquiry into Hydraulic Fracturing, in which it determined that the approval of environmental management plans under the petroleum regulations would become the responsibility of the Minister for Environment and Natural Resources, rather than the Minister for Primary Industry and Resources. In making her decision, she will be advised by the NTEPA. The amendments have been constructed to make sure that advisory role is explicit.

Madam CHAIR: Jo, you also mentioned that nationally there seems to be a shortage of people who are eligible to sit on environmental protection boards. Is that the reason why the Northern Territory's EPA board consists mostly of people who are not Territorians?

Ms TOWNSEND: The NTEPA has a number of very specific requirements in terms of skills and experience. We get a lot of interest in appointments to the NTEPA. When you work through those skills and requirements, it does lend itself to positions of eminence. We have a number of members on our board who are eminent scientists and/or regulators.

There is another challenge in the Territory. That is conflicts of interest. It is often difficult—we have had people who could potentially be members of the NTEPA but they are working in fields that will potentially conflict with the projects in front of them.

Madam CHAIR: Sure. I think that is all my questions. I will throw back to the committee to see if there are any final questions. Member for Katherine?

Ms NELSON: Yes, I have one quick question. I cannot remember if she has answered it or not. It is with regard to the amendment where members of the NTEPA can seek leave. What is the process if there is a conflict of interest on an issue the NTEPA is working on with one of the members of the EPA?

Ms DAVIS: Just to clarify, the seeking leave and the conflict of interest are actually quite separate.

Ms NELSON: Yes.

Ms DAVIS: The seeking leave provision is if a member wants to go on a holiday, gets sick or something like that.

Ms NELSON: Yes.

Ms DAVIS: With regard to conflict of interest, we have not made any changes to the provisions, but there are clear provisions in the existing Act. From a practical perspective, the member identifies that they may have a conflict of interest. That is raised with the rest of the NTEPA board members. They then discuss that potential conflict and determine whether or not they believe there is a conflict. Where there is a conflict, it is noted on a conflict of interest register. Then that person is excluded from all deliberations in regard to that project.

Ms NELSON: Okay.

Ms DAVIS: That exclusion is in terms of both within a board meeting—if there is a board meeting that person will excuse themselves from the room—and in relation to papers that might be circulating that person is excluded from those papers.

Ms NELSON: Okay. I will ask you a couple of questions because I want to put this stuff on record. When a decision is made by the NTEPA in regard to a case or issue that is an independent decision made by the NTEPA. Is there anything in the legislation that gives the minister the authority to intervene or override that decision?

Ms DAVIS: Again, this would depend on the type of decision that is being made. If it is a regulatory decision about waste or pollution, the answer is no, there is no mechanism for the minister to come in over the top, although there is a power for the minister to conduct a review of the decision. If it is in relation ...

Ms NELSON: A review can be conducted, but they cannot override the decision?

Ms TOWNSEND: The legislation allows for the minister to undertake a review. That review is independent. That is, in essence, a merit review of whether the decision was appropriate or not. If the decision is found to not be meritorious, it would go back to the NTEPA for another decision.

Ms NELSON: Okay. It still comes back to the EPA. When an independent review is done, it comes back and says the decision was made against the EPA decision, it is still incumbent on the EPA to do the investigation and make a decision? Is that right?

Ms DAVIS: I believe so. I note that those review powers are under the *Waste Management and Pollution Control Act*, not under this legislation. I guess that is the difference. We are not talking about that act. I feel a little uncomfortable answering questions about that act when I do not have it in front of me, because I do not want to mislead the committee in any way.

Madam CHAIR: Sure. Can we take that as a question on notice? Thank you.

Ms DAVIS: I am not sure, Member for Katherine, if you would like the answer in relation to impact assessment questions as well, or if you would also like that to be taken on notice?

Ms NELSON: Yes, I would like that to be on notice as well.

Madam CHAIR: Thank you very much. Are there any further questions, Member for Katherine?

Ms NELSON: No, that is it from me.

Madam CHAIR: Member for Araluen?

Thank you very much for appearing before us today.