

Submission to the NT Social Policy Scrutiny Committee on the Environment Protection Bill 2019

Thank-you for taking my points into consideration.

Climate cannot be ignored

It is absurd to have an Environment Protection Bill that omits reference to a fundamental aspect of our environment - our precious climate. This Bill must be rejected until it is amended to explicitly ensure the pollution of our climate is greatly reduced. There simply can be no protection of the environment with a severely elevated greenhouse effect.

Beyond all other considerations, what we need are urgent greenhouse gas emission reductions in the NT. Indeed these must be a mandatory component of all decisions, and are so vital to all future life let alone prosperity, that if a project cannot be sure to be at least carbon neutral it should be rejected. Offsets for fossil fuel projects are not satisfactory methods to appear carbon neutral for we are in dire need of those drawdown methods for the pollution we have already emitted.

We have now had too many decades of dithering and there is no longer time to waste or pander to the fossil fools.

Ecological Sustainable Development must favor ecological sustainability!

It appears this Bill begins in a backward way with an inadequate too human-focused definition of ESD:

ecologically sustainable development means development that improves the total quality of human life, both now and in the future, in a way that: (a) maintains the ecological processes on which all life depends; and (b) recognises the need for development to be equitable between current and future generations.

Please reconsider turning this around as is the usual definition:

[Australia's National Strategy for Ecologically Sustainable Development \(1992\)](#) defines ecologically sustainable development as: *'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.'*

ESD requires the effective integration of economic, environmental, social and equity considerations in decision-making processes. ESD aims to provide for the needs of present generations without compromising the ability of future generations to meet their own needs.

The [principles of ESD](#):

The precautionary principle: If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures

to prevent environmental degradation. Public and private decisions should be guided by careful evaluation to avoid serious or irreversible damage to the environment wherever practicable, and an assessment of the risk-weighted consequences of various options.

Inter-generational equity: The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

Conservation of biological diversity and ecological integrity: Conservation of biological diversity and ecological integrity should be a fundamental consideration in environmental planning and decision-making processes. Biodiversity refers to the variety of all life. Environmental and species impact statements are one way that this principle is enacted.

Improved valuation, pricing and incentive mechanisms: Environmental factors should be included in the valuation of assets and services, such as:

- polluter pays – those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
- the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Source: https://www.edonsw.org.au/hys_what_is_ecologically_sustainable_development

We must never rush decisions

Much of the proposed Bill is too prescriptive. For example section 99 (2)(b) is too short a time period. If there are 60 days to respond, and it was not discovered until after 20 days that some extra information is required, then why would it be too late to request more information?

I am concerned about clauses 74 and 77, as if the Minister is on leave or has a very busy schedule, it is conceivable that insufficient time is available to consider the matter, properly review the reports, and make additional enquiries. There must at minimum be a delay mechanism that can be made as in such a case simply deeming the project approved is unacceptable. Rushing important decisions does not lead to confidence that the correct decisions are being made. Indeed being so prescriptive in time for assessment ensures the Minister is pretty much a mere rubber stamper and not a proper process of review as it should be.

Clause 74. Time for decision on environmental approval

This clause identifies that the Minister must determine to grant or refuse the environmental approval within 30 business days of receiving the NT EPA's assessment report and draft approval. If the Minister does not make a decision in this timeframe, the approval is deemed to have been granted, and the draft approval (including its conditions) prepared by the NT

EPA becomes the approval instrument. Division 5 specifies processes associated with publishing the environmental approval and statements of reasons for decisions.

Clause 77. Time for decision on statement of unacceptable impact This clause identifies that the Minister must determine to accept or refuse the statement of unacceptable impact within 30 business days of receiving the NT EPA's assessment report and statement. If the Minister does not make a decision in this timeframe, the Minister is deemed to have accepted the statement and environmental approval of the action is refused.

Review by all concerned

Whilst it is warming to note that landholders, neighbours and submitters of assessment submissions are able to call for a judicial review, there needs to be room for other people to be allowed to call for a review. It is too often that people who feel affected by a proposal but don't fit the categories are automatically excluded.

Clause 276. Standing for judicial review

This clause identifies that decisions made by the Minister, NT EPA and CEO are subject to judicial review. It alters the common law position on standing for judicial review by limiting standing to defined persons being:

- A proponent of an action to which the decision relates.
- An applicant for the decision, for example, an applicant for a transfer of an environmental approval.
- A person directly affected by the decision, such as Traditional Owners of land where an action is occurring or a neighbouring land owner.
- A person who made a genuine and valid submission during the assessment and approval process. This clause explicitly excludes persons who submit form letters or sign petitions.

Also, a call for review shouldn't always necessitate going to court. Indeed in clause 277, it seems only the proponent can make a non-judicial review, and this is inadequate.

Clause 277. Review by NTCAT This clause provides that certain decisions made by the CEO can be reviewed by the Northern Territory Civil and Administrative Tribunal (NTCAT). The Schedule identifies the reviewable decisions and who may seek the review. In general terms, reviews are limited to the person who is directly affected by the decision.

The proponent should not have special rights to review the decision against them, if other parts of the community have no right to review a decision in favour of the proponent. The proper protection of our environment is everyone's concern, and this Bill needs to reflect that.

Can we rely on the EPA?

The extensive over-reliance on the EPA is of concern. I question the truth of this statement: *“the NT EPA is best positioned to identify when an agreement may be of benefit to the Territory, proponent and other jurisdiction.”*

As the EPA are -to my understanding- by definition mostly non-Territorians it is quite conceivable that indeed they are **not** best positioned to identify when an agreement may be of benefit to the Territory.

Indeed, if the EPA were indeed best to make decisions for the NT, then clause 66 would be regularly invoked:

Clause 66. Statement of unacceptable impact

This clause acknowledges that there may be circumstances where the NT EPA considers that the potentially significant environmental impacts associated with an action cannot be appropriately avoided, mitigated and managed, or offset. In those instances it may consider that the Minister should not grant an approval due to the nature, context and extent of the environmental impacts. The NT EPA may prepare a statement of unacceptable impact specifying the nature of the potential impacts and why it is not appropriate to grant an approval.

Reject this Bill as it maintains environmental harm

It remains vital that not all applications are accepted as being able to limit their impact on the environment. Besides the real impacts that occur but are not noticed by piecemeal projects being considered in isolation and with short timeframe and narrow and immediate vicinity focuses, decades of such approvals after impact assessments presumably following the guidelines have resulted in extreme levels of environmental harm. The status of our environment is appalling. We have unprecedented levels of climate pollution, unmitigated weeds and feral species, land clearing and overstocking and chemical contaminations among other damaging processes that are leading us to unacceptable levels of biodiversity loss and extinctions.

Consequently, as this draft Bill seems to be business as usual and will be likely to maintain the status quo environmental harm, it should be rejected. We can no longer sit by while our environment, the very platform we require for life is being eroded.