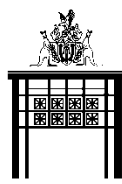

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legal and Constitutional Affairs Committee

Report of Ministerial Correspondence on Subordinate Legislation and Publications

October 2020 – July 2021

August 2021

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Chair's Preface

As rules, regulations and by-laws affect people in their day to day lives, it is important that the Assembly maintains a sufficient level of scrutiny of subordinate legislation to ensure that they keep within the purpose of the laws under which they are made and do not unduly affect people's rights. As part of that scrutiny, the Committee obtains advice from its independent legal counsel, Professor Ned Aughterson, and writes to responsible Ministers regarding any questions or concerns the Committee has with a regulation. Ministers reply with clarification about the intended operation of the regulations or undertakings to correct any errors. This report places those letters on the public record and allows interested persons to see those clarifications or undertakings.

During the reporting period, the Committee considered 38 pieces of subordinate legislation. As detailed in this report, the Committee's legal counsel identified concerns regarding four regulations. It also came to the Committee's attention that, following gazettal, two regulations (Liquor Amendment Regulations and Building Amendment Regulations), were not then tabled in the Assembly within 3 sitting days as required under section 63(1)(c) of the *Interpretation Act 1978*; thereby rendering the regulations of 'no effect'.

The Committee is also responsible for monitoring compliance with statutory reporting requirements. For example, all Northern Territory government departments and a range of other organisations are required to provide annual reports on their activities to the Speaker or relevant Minister for tabling in the Assembly. It is pleasing to note that during the current reporting period all agencies, independent officers, statutory authorities and government owned corporations met their relevant reporting obligations.

On behalf of the Committee, I would like to thank Ministers, their staff and agencies for their responses to the Committee's queries and I would like to thank staff of the Department of the Legislative Assembly. The Committee also acknowledges the significant contribution made by Professor Aughterson, and thanks him for his diligence in advising the Committee. I also thank my fellow Committee members for their bipartisan approach in seeking to ensure a high standard of rules and regulations in the Northern Territory.

Mr Joel Bowden MLA
Chair

Committee Members

Mr Joel Bowden Member for Johnston	
Party:	Territory Labor
Parliamentary Position	Deputy Speaker
Committee Membership	
Standing:	Legal and Constitutional Affairs House Public Accounts
Chair:	Legal and Constitutional Affairs Public Accounts
Deputy Chair:	House
Ms Marie-Clare Boothby MLA Member for Brennan	
Party:	Country Liberals
Committee Membership	
Standing	Legal and Constitutional Affairs
Mr Lawrence Costa Member for Arafura	
Party	Territory Labor
Committee Membership	
Standing	Legal and Constitutional Affairs Public Accounts
Mr Steve Edgington MLA Member for Barkly	
Party:	Country Liberals
Committee Membership	
Standing:	Legal and Constitutional Affairs
Mr Mark Monaghan MLA Member for Fong Lim	
Party:	Territory Labor
Parliamentary Position	Government Whip, Acting Deputy Speaker
Committee Membership	
Standing:	Legal and Constitutional Affairs Public Accounts Standing Orders
Deputy Chair:	Legal and Constitutional Affairs, Public Accounts

On 23 February 2021 the Assembly discharged the Member for Blain, Mr Mark Turner MLA, from the Committee and appointed the Member for Arafura, Mr Lawrence Costa MLA, in his place. Pursuant to Standing Order 181, on 1 March 2021 Member for Nelson, Mr Gerard Maley MLA, was discharged from the Committee and replaced by Member for Barkly, Mr Steve Edgington MLA.

Committee Secretariat

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Terms of Reference

Standing Order 178

Legal and Constitutional Affairs Committee

(1) A Legal and Constitutional Affairs Committee will be appointed at the commencement of each Assembly to inquire into and report on such constitutional and legal matters as may be referred to it by:

(a) the Attorney-General, or

(b) a resolution of the Assembly.

(2) The Committee will consist of 5 members.

Sessional Order 10

Subordinate Legislation and Publications Committee Duties Assigned to Legal and Constitutional Affairs Committee

The Assembly suspends the requirement to appoint a separate Subordinate Legislation and Publications Committee as required under Standing Order 176 and assigns all of the duties under that Standing Order to be undertaken by the Legal and Constitutional Affairs Committee as established under Standing Order 178.

Standing Order 176

Subordinate Legislation and Publications Committee

(1) A Subordinate Legislation and Publications Committee must be appointed at the commencement of each Assembly to examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.

(2) The Committee must consist of five Members.

(3) The Committee will, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider:

(a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made,

(b) whether the instrument trespasses unduly on personal rights or liberties,

(c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions,

(d) whether the instrument contains matter which in the opinion of the Committee should properly be dealt with in an Act,

(e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made,

(f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly, and

(g) whether for any special reason the form or purport of the instrument calls for elucidation.

(4) The Committee, if it is of the opinion that an instrument should be disallowed or disapproved:

  (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly, and

  (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

(5) The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.

(6) The Committee will inquire into and report, from time to time, on the printing, publication and distribution of publications or such matters as are referred to it by the Speaker or the Assembly.

(7) For the purposes of this Standing Order, ‘instrument of a legislative or administrative character’ has the same meaning as that defined in the *Interpretation Act.*

Adopted 20 October 2020

1 Introduction

1.1 Pursuant to Sessional Order 10, the Legal and Constitutional Affairs Committee has been given the duties of the Subordinate Legislation and Publications Committee to examine and report on all instruments of a legislative or administrative character that the Assembly may disallow or disapprove and advise the Assembly whether the instrument has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

1.2 Committees to examine subordinate legislation against such terms are common in Westminster style Parliaments. This scrutiny assists the Parliament to ensure other bodies use their delegated power to make laws according to certain principles. Those principles are detailed in Standing Order 176(3) of the Committee's Terms of Reference.

1.3 Subordinate legislation is any regulation, rule or by-law made under an Act.[1] Subordinate legislation takes effect from the time it is notified in the *Northern Territory Government Gazette*, or from the time specified in the legislation.[2] However, where any Act confers the power to make or amend statutory rules, regulations and by-laws subject to disallowance under section 63 of the *Interpretation Act 1978,* there is a statutory requirement for all such instruments to be presented to the Assembly within three sitting days of its notification in the *Gazette.*[3] Further, section 63(8) of the Act provides that if subordinate legislation is not tabled in accordance with section 63(1)(c) 'it is of no effect'.[4]

1.4 The Committee obtains independent legal advice on whether an instrument raises any issues. It will then refer issues raised to the relevant Minister for response. If issues arise warranting the Assembly's immediate attention, the Committee reports that subordinate legislation to the Assembly. It also provides periodic reports such as this to the Assembly of its correspondence with Ministers to account to the Assembly for the work it has done and place on the public record the issues noted and the explanations given.

1.5 In addition to its scrutiny of subordinate legislation, the Committee is responsible for monitoring compliance with the statutory reporting requirements of Government entities. For example, under section 28 of the *Public Sector Employment and Management Act 1993* and section 12 of the *Financial Management Act 1995,* all Northern Territory government departments are required to present annual reports and audited financial statements to the appropriate Minister for tabling in the Assembly.

1.6 Independent Officers, such as the Auditor-General, Ombudsman and Independent Commissioner Against Corruption; statutory authorities; government owned

[1] *Interpretation Act 1978* (NT), ss 7 & 63
[2] *Interpretation Act 1978* (NT), s 63(1)
[3] *Interpretation Act 1978* (NT), ss 63(1)(c) & 63(3)(c)
[4] *Interpretation Act 1978* (NT), s 63(8)

corporations; and a number of other regulatory bodies are also required to submit annual reports, audited financial statements, and inquiry reports to the Speaker or relevant Minister for tabling pursuant to their respective enabling legislation. It is pleasing to note that in the current reporting period all agencies, independent officer, statutory authorities, and government owned corporations met their relevant reporting requirements.

2 Disallowance of Subordinate Legislation

2.1 Pursuant to section 63(9) of the *Interpretation Act*, the Assembly may disallow subordinate legislation by motion; notice of which must be given within 12 sitting days of the tabling of the subordinate legislation. This disallowance power enables the Assembly to supervise how other bodies such as the Administrator uses the Assembly's law-making power that has been delegated to them.

2.2 As indicated previously, if the Committee identifies issues of concern, it will first seek to resolve the matter with the responsible Minister. However, if the Committee cannot otherwise resolve the matter and is of the opinion that subordinate legislation, or a provision of subordinate legislation, ought to be disallowed, Standing Order 176(4) stipulates that the Committee:

> (a) shall report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly; and
>
> (b) if the Assembly is not sitting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

2.3 Following consideration of the Committee's report, the Assembly may pass a resolution disallowing subordinate legislation which has the effect of repealing the legislation. In the case of subordinate legislation amending or repealing other legislation, the disallowance restores the other legislation from the date of the disallowance.

2.4 Where the Assembly passes a resolution of disallowance, section 64 of the Act places restrictions on the making of subordinate legislation that is the same in substance or has the same effect as the disallowed legislation within six months of the disallowance, unless the Assembly rescinds its resolution. Subordinate legislation made in contravention of this provision is of no effect.

Protective Disallowance Notices

2.5 Given the Committee's role, it is vital that it concludes its consideration of an instrument before the end of the disallowance period to meet the requirements of the Committee's terms of reference, and to enable the Assembly to give effect to any recommendations to disallow the instrument.

2.6 If it appears the 12 sitting day disallowance period for an instrument will expire before the Committee can resolve any concerns, it may ask the Chair to give the Assembly a notice of motion to disallow the regulation in order to extend the disallowance period. The effect of this is to extend the disallowance period until the notice of motion is finally dealt with.

Tabling of Subordinate Legislation

2.7 As noted previously, pursuant to section 63 of the *Interpretation Act*, subordinate legislation must be tabled in the Assembly within three sitting days of its notification in the *Gazette.* Failure to do so renders the instrument invalid.[5]

2.8 During the reporting period, it came to the Committee's attention that following gazettal neither the Liquor Amendment Regulations [No. 2 of 2021] nor the Building Amendment Regulations [No. 3 of 2021] were then tabled in the Assembly within the three sitting days. In the first instance, the Committee notified the Cabinet Office and was subsequently advised that the matter had been raised with the Chief Executive Officer for the Department of the Chief Minister and Cabinet and that the department was working with the Office of the Parliamentary Counsel to rectify the oversight.

Noting the importance of ensuring that subordinate legislation is made in accordance with the *Interpretation Act,* the Committee also sought advice from the responsible Ministers as to how the matter had been resolved. This correspondence is included in the following chapter.

[5] *Interpretation Act 1978,* ss 63(1) & 63(8)

3 Ministerial Correspondence on Subordinate Legislation

Environment Protection Regulations No. 6 of 2020

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.2

Hon Eva Lawler MLA
Minister for Environment
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Environment Protection Regulations (No. 6 of 2020)

The Legal and Constitutional Affairs Committee is considering the Environment Protection Regulations (No. 6 of 2020) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 22 January 2021.

Thank you for your assistance.

Yours sincerely

Mr Joel Bowden MLA
Chair

11 November 2020

GPO Box 3721, DARWIN NT 0801
Telephone: 08 8946 1485 e-mail: LA.Committees@nt.gov.au

Advice from Prof Ned Aughterson to the Legal and Constitutional Affairs Committee

Environment Protection Regulations 2020 (No. 6 of 2020)

Reg 12(2): s 28 of the Act deals with the declaration of environmental objectives by the Minister, while s 30 deals with the declaration of referral triggers by the Minister. In relation to the former, s 28(4) provides that a declaration may be made on the Minister's own initiative or on the recommendation of the EPA under s 31 of the Act. Section 31 provides that the EPA may recommend to the Minister a proposed environmental objective or referral trigger and the Minister must consider that recommendation and either accept or refuse it.

Sections 28(3) and 30(3) provide that a declaration must be 'prepared' in accordance with the regulations. That would seem to indicate the manner of preparation and the information or material to be included. However, reg 12(1) prescribes that the Minister 'must' consider the comments of the EPA and other written comments received, while reg 12(2) prescribes the decisions the Minister may make. It is not clear that the Act allows any such directive under the regulations, particularly given that s 31 deals with what is to happen where the EPA makes a recommendation and also given that s 28(4) provides that a declaration may be made on the Minister's own initiative or on the recommendation of the EPA. The effect of reg 12 is that the Minister must in all circumstances consider not only the recommendation of the EPA but also other comments received on a draft declaration. In any event, to the extent that there is a recommendation under s 31 of the Act, reg 12 appears to be superfluous. At a minimum, there is potential for confusion where there is an evident overlap between the Act and regulations.

Regs 13 to 26 16(2), 21(2), 26(2): regulations 13 to 26 provide a process for the review, amendment and revocation of objectives and triggers. By s 32 of the Act a review must be 'conducted' in accordance with the regulations, while by s 33 any amendment or revocation must be in accordance with the regulations. While a requirement to be 'conducted' in accordance with the regulations (in relation to review), suggests a broader prescriptive power, the distinction in language used in relation to amendment and revocation (that it simply be 'in accordance with' the regulations) suggests a narrower regulatory power and would seem to relate to the manner and form or notification only.

However, regs 13 to 26 in common prescribe that the Minister must consult with the EPA and what must be considered by the Minister before making a decision, Particularly given the different language used in the Act as between review, on the one hand, and amendment and revocation on the other hand, it is not clear that the Act allows for such prescription in relation to the latter.

Also, regs 16(2), 21(2) and 26(2), in prescribing the decisions the Minister may make, appear to be superfluous. By s 33(1) of the Act the Minister may, by *Gazette* notice, amend or revoke an environmental objective or a referral trigger.

Reg 16(3): there is a potential conflict between the Act and the regulation. Where, following a review, a decision is made to amend or to retain the objectives and triggers, regulation 16(3) provides:

> The Minister must publish a decision and statement of reasons for the decision under subregulation (2) as soon as practicable after the decision is made. (emphasis added)

On the other hand, while s 33(2) of the Act provides that any amendment or revocation must be in accordance with the regulations (and would seem to apply where there has been a review), s 33(3) provides:

> The Minister must publish a statement of the reasons for the amendment or revocation as soon as practicable after the amendment is made or the environmental objective or referral trigger is revoked. (emphasis added)

There is a potential conflict between the Act and the regulation in so far as the Act requires

publication as soon as practicable after the amendment or revocation is made (by s 33(1) of the Act, amendment or revocation is made by Gazette notice), while the regulation requires publication as soon as possible after the decision is made..

Presumably, a decision is made prior to notice in a Gazette, so that the time in which the 'as soon as practicable' begins to run under the regulation will differ from the prescription under the Act.

Reg 32(2): again, there is a question of whether this subregulation is superfluous, given the provisions at s 36(1) and 38(1) of the Act.

Reg 33: s 39(1) and (2) of the Act provide that the Minister may by gazette notice revoke a declaration (of an environmental area or prohibited actions) and set out the matters of which the Minister must be satisfied before making a declaration. Subsection 39(4) provides that the 'revocation of a declaration under this Division must be in accordance with the regulations'. On the other hand, reg 33 provides:

> The Minister must consult with the NT EPA and consider the comments of the NT EPA before revoking a temporary declaration in whole or in part under section 39(1) of the Act.

Arguably, s 39(4) of the Act refers to the manner and form of revocation, rather than allowing the regulations to prescribe the steps that must be taken by the Minister prior to the making of the decision to revoke. Compare, s 36(3) and 38(3) of the Act, which provide that declarations of environmental areas or prohibited actions must be 'prepared in accordance with the regulations' and s 32(3) of the Act, which provides that a review of environmental objectives and referral triggers must be 'conducted' in accordance with the regulations. The simple requirement in s 39(4) of the Act that the revocation of a declaration 'must be in accordance with the Act' might suggest something less than a regulation going to related preparation or conduct.

It is also noted while a permanent declaration of a protected environmental must be 'prepared' in accordance with the regulations, there is no such requirement in relation to a temporary declaration of a protected environmental area under s 35 of the Act, indicating a lesser regulatory involvement for temporary declarations.

Reg 34-38: regulations 34 to 38 deal with the revocation of a permanent declaration in relation to prohibited areas and prohibited actions. The same issue arises as to whether s 39(4) of the Act allows the prescription of the steps to be taken leading to the revocation, or whether it merely allows regulations as to the manner and form of the revocation.

Reg 39-75: these regulations deal with referral of proposed actions and strategic proposals to the EPA under s 48, 49 and 50(2)(c) of the Act. Subsection 55(1) provides:

> The NT EPA must consider and deal with any referral of an action or strategic proposal under this Division in accordance with the regulations. (emphasis added)

Subsection 55(4) provides:

> Without limiting subsection (1), the NT EPA must determine that an environmental impact assessment is required for a referred action or referred strategic proposal if it determines that the referred action or the actions proposed by the referred strategic proposal have the potential to have a significant impact on the environment. (emphasis added)

On the other hand, regulation 57(2)(c) provides for the EPA to recommend to the Minister that a strategic assessment be carried out, while regulation 66 provides that the Minister makes the decision as to whether the assessment is to be carried out. That does not appear to be consistent with the approach required by the Act. See also regulation 69 to 75.

Reg 66-75: regulations 66 to 75 deal with the Minister's decision on recommendations made by the EPA. To some extent they seem to replicate the provisions under the Act and the legislative basis for the regulations is not clear. For example, regulation 66(2) provides that where a recommendation is made by the EPA that the Minister refuse to grant environmental

approval, the Minister may accept the recommendation and refuse to grant approval. These regulations appear to relate to a determination made by the EPA under s 55 of the Act as to whether an impact assessment is required. Compare s 57, which applies where it is determined that an assessment is required. On the other hand, s 69 of the Act deals with acceptance or refusal by the Minister, and no reference is made in the Act, in that context, to any regulatory power to prescribe what the Minister may or may not do.

Also, regulation 74 refers to the consequences where the Minister refuses 'to grant an environmental approval for a proposed action or strategic proposal under regulation 66(2)(a)'. The legislative basis for this regulation is not apparent.

Further, regulation 68 provides for a show cause process. The authority for the making of this regulation is not clear and there is a question of how it sits with the show cause process provided for under s 72 of the Act.

Reg 156(3): Reg 156(3) sets out the purpose of the report prepared on completion of the environmental impact assessment process, while reg 156(4) sets out the matters the report must assess. Other than s 57 of the Act, which requires the assessment to be carried out in accordance with the regulations, there is no regulatory prescription in relation to the assessment report. It is not clear how subregulations 156(3) and (4) sit with s 42 of the Act, which expresses in different terms the purpose of the environmental impact process. There is a question of why the purpose of the assessment report should not reflect the purpose of the environmental impact process itself.

Reg 217(1) and 219-221: the relationship between these regulations is not clear. Reg 217(1) provides that the EPA may accept or refuse to accept a referral of a significant variation under s 52 of the Act for a strategic assessment 'if it considers it appropriate to do so'. On the other hand Regs 219-221 set out the specific basis on which the EPA may refuse to accept such a referral. That also begs the question of whether it is within the contemplation of the legislation that the EPA could refuse to accept a referral simply on the basis that 'it considers it appropriate to do so', particularly given provisions such as s 55(2) and s 106(1)(b) of the Act.

Reg 227: part 7 Division 3 of the regulations provides for the process for referral of a significant variation after environmental approval has been granted. This is dealt with at s 106 to s 108 of the Act. Section 106(1)(b) provides that the Minister may amend an environmental approval 'on the recommendation of the NT EPA as a result of an environmental impact assessment of a significant variation of an action or strategic proposal – in accordance with the regulations' (emphasis added). On the other hand, reg 227(1)(b) provides that the EPA may 'decide' whether 'the environmental impact of the variation can be managed through amendments to the approval'. By regulations 228 and 229 the EPA must give the approval holder notice of the 'decision' and publish the 'decision'. The use of the term 'decision' is potentially confusing, given that the EPA ultimately makes only a recommendation to the Minister, even allowing for the implicit acknowledgment at reg 230(2)(b) that in fact the EPA is only making a recommendation.

Reg 234(5): sections 127 to 132 or the Act provide for environmental protection bonds. It can be a condition of environmental approval that a person pay an environmental protection bond, which can be called upon where the approval holder causes environmental harm. By s 129 of the Act, the amount or value of the bond in each case is determined by the Minister. By s 129(5), allowance may be made for the amount of the bond to be recalculated at different stages of the action to which the environmental approval applies. By s 131(2) any claim made on the bond by the Minister or CEO (for example where the Minister or CEO incurs expenses as a result of environmental harm) must be made in accordance with the regulations. Such provision is made at reg 234. However, reg 234(5) goes further, providing:

> If the amount of bond is less than the reasonable costs and expenses incurred by the Minister or the CEO to which the claim applies, the recovery of an amount of bond does not prevent the Minister or CEO from recovering the remaining costs and expenses from the approval holder. (emphasis added)

This seems to go beyond a regulation relating to how a claim on the bond is to be made. It is noted that by s 293(2)(b) of the Act, regulations may 'provide for the recovery of costs incurred by the Minister, the CEO or the NT EPA under or for this Act'. The term 'costs and expenses' and 'costs or expenses' is used in several sections of the Act,[13] whereas the regulatory power relates to the recovery of 'costs' only.[14] It is also noted that the legal foundation for any additional claim is not made clear in the regulation.

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Your Ref: COMM2020/00013.2

Mr Joel Bowden MLA
Chair
Legal and Constitutional Affairs Committee
GPO Box 3721
DARWIN NT 0801

Dear ~~Chair~~ Joel

Thank you for your letter of 11 November 2020 regarding the Legal and Constitutional Affairs Committee review of the Environment Protection Regulations (No.6 of 2020).

The Department of Environment, Parks and Water Security has prepared a response to each of the matters raised by your independent legal advisor, which is attached. The response refers to future reforms of the *Environment Protection Act 2019* (the Act). This Government is committed to continually improving its environmental regulatory framework. Future reforms to the Act include the introduction of provisions designed to improve the management of the environmental impacts of mining activities, and provisions to manage wastes and pollution.

Consultation with key stakeholder groups on the first of these reforms – those related to environmental impacts from mining activities – has commenced. I anticipate draft legislation will be prepared and made available for public review in the later part of 2021. This will provide an opportunity to address those areas of the Act that your legal advisor considers contain minor wording inconsistencies that may result in future interpretational difficulties.

I thank you for the opportunity to provide clarification and trust that this response assists you. I would be happy to answer any further queries or discuss the response in further detail with you if this would assist the Committee in its deliberations.

Yours sincerely

EVA LAWLER

21 JAN 2021

Response to the Legal and Constitutional Affairs Committee

Environment Protection Regulations No.6 of 2020

Context to the Regulations

The Department of Environment, Parks and Water Security provides the following information to assist the Legal and Constitutional Affairs Committee in its consideration of the Environment Protection Regulations 2020 (No.6 of 2020).

The *Environment Protection Act 2019* (the Act or EP Act) and the Environment Protection Regulations 2020 (the Regulations) establish a framework for ensuring the sustainable development of the Northern Territory through the environmental impact assessment and approval of actions that may have a significant impact on the environment.

It is important to understand the Northern Territory's environmental management framework, and in particular the roles and responsibilities of decision makers within the framework, when considering and interpreting the Regulations. Broadly, these decision makers and their roles are as follows:

- The Minister for Environment is responsible for granting (or refusing) approval to conduct activities. The Minister is also responsible for establishing the framework in which other decision makers will operate by, for example, declaring environmental objectives and referral triggers, or identifying protected environmental areas and prohibited actions. The Minister's role is therefore to establish the parameters for, and authorise, ecologically sustainable development in the NT.
- The Northern Territory Environment Protection Authority (NT EPA; or as referred to in the queries, the EPA) has been established under the *Northern Territory Environment Protection Authority Act 2012* (NT EPA Act) to provide the Minister, and Government more broadly, with independent expert environmental advice. The NT EPA is a statutory board comprising eight members.

  Within the context of the EP Act and Regulations, the NT EPA is responsible for all decisions associated with conducting an appropriate environmental impact assessment process to assess the potential for actions to have a significant impact on the environment. Its decision making function is limited to those decisions that are necessary in order to be able to fulfil its obligations to advise the Minister whether proposed actions should be approved (or refused), and any conditions that should be applied in order to appropriately manage the environmental impacts of the activities.
- The Chief Executive Officer (CEO) is responsible for ensuring the compliance and enforcement of the environmental approval and other obligations specified in the EP Act or Regulations.

  Under the NT EPA Act, the CEO is required to provide the NT EPA with the staff and facilities required to enable it to fulfil its powers and functions. In simple terms, the CEO provides the staff and undertakes all administrative functions associated with operating a statutory board. Consequently, under the EP Act and Regulations, the CEO also has powers to recover costs or expenses incurred by or on behalf of the NT EPA.

There are a number of references in the EP Act to preparing or undertaking completing processes or actions in accordance with the regulations.

The EP Act also contains a broad regulation making power at section 293(1) which states, "[t]he Administrator may make regulations under this Act". Section 293(2) goes on to list a number of specific matters about which regulations can be made. This list is non-exhaustive and does not include matters that are referenced in other parts of the EP Act (such as the making of environmental objectives, or environmental protected area or prohibited action declarations) because these are addressed through more specific references to regulations in relevant provisions of those parts of the Act.

In addition, section 293(1) includes a 'note' directing readers to section 65 of the *Interpretation Act 1978*. Section 65 of the *Interpretation Act 1978* provides:

> (1) If an Act authorises or requires the making of subordinate legislation under the Act, the power enables subordinate legislation to be made with respect to any matter that:
>
> > (a) is required or permitted to be prescribed by the Act; or
> >
> > (b) is necessary or convenient to be prescribed for carrying out or giving effect to the Act.
>
> (2) Subsection (1) applies even though the Act also authorises the making of subordinate legislation for a particular purpose.
>
> (3) Power conferred by the Act to make subordinate legislation for a particular purpose is in addition to, and does not limit the effect of, power conferred by the Act to make subordinate legislation under the Act unless the Act expressly provides otherwise.

This response groups each of the queries by broad subject matter, and has separated queries on specific regulations where this would appear to assist in reviewing the response.

Queries relating to declarations of environmental objectives and referral triggers

Query: Regulation 12

Section 28 of the Act deals with the declaration of environmental objectives by the Minister, while s.30 deals with the declaration of referral triggers by the Minister. In relation to the former, s.28(4) provides that a declaration may be made on the Minister's own initiative or on the recommendation of the NT EPA under s.31 of the Act. Section 31 provides that the EPA may recommend to the Minister a proposed environmental objective or referral trigger and the Minister must consider that recommendation and either accept or refuse it.

Sections 28(3) and 30(3) provide that a declaration must be 'prepared' in accordance with the regulations.

That would seem to indicate the manner of preparation and the information or material to be included.

However, reg.12(1) prescribes that the Minister 'must' consider the comments of the EPA and other written comments received, while reg.12(2) prescribes the decisions the Minister may make. It is not clear that the Act allows any such directive under the regulations, particularly given that s.31 deals with what is to happen where the NT EPA makes a recommendation and also given that s.28(4) provides that a declaration may be made on the Minister's own initiative or on the recommendation of the NT EPA. The effect of reg.12 is that the Minister must in all circumstances consider not only the recommendation of the

NT EPA but also other comments received on a draft declaration. In any event, to the extent that there is a recommendation under s.31 of the Act, reg.12 appears to be superfluous. At a minimum, there is potential for confusion where there is an evident overlap between the Act and regulations.

Response:

The term 'prepared' as used in sections 28 and 30 of the Act is intended to be considered using its normal meaning of 'made'. 'Made' or 'prepared' in this context is designed to ensure that there is a process for developing the declarations, rather than prescribing a process about the information to be included in the declarations.

Sections 28(2), 29(2) and (3) provide guidance respectively as to the purpose, and therefore content, of environmental objectives or referral triggers to the extent that this is necessary.

Section 31 provides the power for the NT EPA to make a recommendation about the declaration of an environmental objective or referral trigger. Section 31(3) identifies the Minister's powers in response to the recommendation; i.e. acceptance or refusal of the recommendation.

The NT EPA's recommendation under s.31 is not constrained by form or information. It is likely that the NT EPA will provide broad advice, e.g. that a particular type of action should be declared as a referral trigger, while the process established by the Regulations allows the Minister to prepare and seek public comment at the level of detail required of a declaration.

The Minister's decision under section 31 is not intended to override, nor does it override, the requirements of section 28(3) in terms of the Minister following a publicly consultative process in regards to the final declaration. Acceptance of a recommendation to propose the making of a declaration is not the same as making a declaration. The Minister's acceptance of the recommendation in accordance with s.31(3) merely commences the processes required of the Minister to complete a declaration as specified in sections 28 and 30 of the Act and regulations 9 to 12.

The decisions of the Minister in relation to a proposed declaration contained in regulation 12(2) are not inconsistent with section 31 as they relate to different types of decisions.

The requirement for the Minister to consider both the NT EPA's comments and other comments received during the public submission period as specified by regulation 12(1) is also not inconsistent with the Act as this accords with the power provided in section 28(3) and the Minister's powers more broadly under section 28.

The requirement in regulation 12(1) for the Minister to consider all comments made during the public consultation period is not superfluous in regards to a recommendation made by the NT EPA under section 31 of the Act. The requirement ensures that even where the Minister is acting on the advice of the NT EPA in determining to make a declaration under section 28, views of other stakeholders on the detail of such declaration are still considered in the declaration decision making process. It also ensures the NT EPA is provided with an opportunity to review and comment on the interpretation, or application, of its advice in the context of the Minister's draft declaration.

Query: Regulations 13 to 26, 16(2), 21(2), 26(2)

Regulations 13 to 26 provide a process for the review, amendment and revocation of objectives and triggers. By s.32 of the Act a review must be 'conducted' in accordance with the regulations, while by s.33 any amendment or revocation must be in accordance with the regulations. While a requirement to be 'conducted' in accordance with the regulations (in relation to review), suggests a broader prescriptive

power, the distinction in language used in relation to amendment and revocation (that it simply be 'in accordance with' the regulations) suggests a narrower regulatory power and would seem to relate to the manner and form or notification only.

However, regulations 13 to 26 in common prescribe that the Minister must consult with the NT EPA and what must be considered by the Minister before making a decision. Particularly given the different language used in the Act as between review, on the one hand, and amendment and revocation on the other hand, it is not clear that the Act allows for such prescription in relation to the latter.

Also, regulations 16(2), 21(2) and 26(2), in prescribing the decisions the Minister may make, appear to be superfluous. By s.33(1) of the Act the Minister may, by Gazette notice, amend or revoke an environmental objective or a referral trigger.

Response:

Section 32(3) of the Act states that "a review must be conducted in accordance with the regulations". Section 33(2) of the Act states that "an amendment or revocation of an environmental objective or referral trigger must be in accordance with the regulations".

DEPWS acknowledges the slight difference in language between sections 32(2) and 33(2) in respect of "conducted in accordance" and simply "in accordance". Notwithstanding the slight difference in language there is no intended difference in the operation of these sections. However, in recognition of the potential for uncertainty in interpretation to arise from this inconsistency, DEPWS will seek to amend sections 32(2) and 33(2) to align the wording in future reforms to the Act.

To the extent that sections 32 or 33 or (more broadly) 293(1) of the Act may be unclear in the breadth of the powers to prescribe certain matters in the Regulations, this is clarified by section 65(1)(b) of the *Interpretation Act 1978* which identifies that matters may be made in respect to any matter "necessary or convenient....for....giving effect to the Act". In respect of section 65(3) of the *Interpretation Act 1978*, neither sections 32(2) or 33(2) provide any express limitations to the regulation making power.

Regulations 16(2), 21(2) and 26(2) operate to provide more clarity about the types of decisions the Minister may make having received public comments on a review, draft amendment or revocation of a declaration. These provisions are not superfluous as they relate to the responsibility of the Minister in making a decision about the need to amend or revoke an existing declaration or to make a new declaration. These responsibilities are separate to the substantive power in section 33(1) of the Act for the Minister to make a declaration following a review, or in relation to an amendment or revocation.

Query: Regulation 16(3)

There is a potential conflict between the Act and the regulation. Where, following a review, a decision is made to amend or to retain the objectives and triggers, regulation 16(3) provides:

> The Minister must publish a decision and statement of reasons for the decision under subregulation (2) as soon as practicable after the decision is made. (emphasis added)

On the other hand, while s.33(2) of the Act provides that any amendment or revocation must be in accordance with the regulations (and would seem to apply where there has been a review), s.33(3) provides:

> The Minister must publish a statement of the reasons for the amendment or revocation as soon as practicable after the amendment is made or the environmental objective or referral trigger is revoked. (emphasis added)

There is a potential conflict between the Act and the regulation in so far as the Act requires publication as soon as practicable after the amendment or revocation is made (by s.33(1) of the Act, amendment or revocation is made by Gazette notice), while the regulation requires publication as soon as possible after the decision is made.

Presumably, a decision is made prior to notice in a Gazette, so that the time in which the 'as soon as practicable' begins to run under the regulation will differ from the prescription under the Act.

Response:

As noted in the query, regulation 16(3) relates to the decision by the Minister about the next steps in relation to a potential new declaration or amendment of an existing declaration following a review.

Section 33(2) of the Act relates to the making of a declaration.

The query correctly identifies that a decision (under regulation 16(2)) would be made prior to any Gazettal (under section 33(1) of the Act).

There is a timing difference in the requirements placed on the Minister due to the different activities being addressed by the two provisions. The Minister must prepare and publish a statement for the decision under regulation 16 as soon as practicable after the decision is made. This may occur well before the Minister takes action to make a declaration under section 33; or it may be the only action taken by the Minister if the Minister determines in accordance with regulation 16(2)(b) that no further action is required in regards to the review.

The decision and statement of reasons under regulation 16(3) relates to the comments received under regulation 16(1) and the Minister's decision under regulation 16(2). The statement of reasons under section 33(3) relates to the Minister's publication of a declaration under section 33(1). While it is acknowledged that there may be some overlap in the content of the statement of reasons, there may also be differences as the nature of the decision, and the formulation of the reasons for the decision, are different, albeit both relating to the same matter.

Query: Regulation 32(2)

There is a question of whether this subregulation is superfluous, given the provisions at s 36(1) and 38(1) of the Act.

Response:

Section 36(1) of the Act provides the power for the Minister to make a permanent declaration of a protected environmental area, while section 38(1) provides the power for the Minister to make a declaration to prohibit a specific action or class of actions.

Sections 36(2) and 38(3) of the Act relevantly require the Minister to prepare a declaration in accordance with the Regulations.

Regulation 32(2) identifies the types of decisions the Minister may make in relation to a proposed declaration of a protected environmental area or prohibited action or class of prohibited actions following public consultation activities.

Regulation 32(2) operates to provide more clarity about the types of decisions the Minister may make having received public comments on draft declaration for a protected environmental area or in relation to prohibited actions. The subregulation is not superfluous as it relates to the responsibility of the Minister in

making a decision about the making of a proposed declaration. This responsibility is separate to the substantive powers in sections 36(1) and 38(1) of the Act for the Minister to make the declarations.

Query: Regulation 33

Sections 39(1) and (2) of the Act provide that the Minister may by gazette notice revoke a declaration (of an environmental area or prohibited actions) and set out the matters of which the Minister must be satisfied before making a declaration. Subsection 39(4) provides that the 'revocation of a declaration under this Division must be in accordance with the regulations'. On the other hand, reg.33 provides:

> The Minister must consult with the NT EPA and consider the comments of the NT EPA before revoking a temporary declaration in whole or in part under section 39(1) of the Act.

Arguably, s.39(4) of the Act refers to the manner and form of revocation, rather than allowing the regulations to prescribe the steps that must be taken by the Minister prior to the making of the decision to revoke. Compare, ss.36(3) and 38(3) of the Act, which provide that declarations of environmental areas or prohibited actions must be 'prepared in accordance with the regulations' and s.32(3) of the Act, which provides that a review of environmental objectives and referral triggers must be 'conducted' in accordance with the regulations. The simple requirement in s.39(4) of the Act that the revocation of a declaration 'must be in accordance with the Act' might suggest something less than a regulation going to related preparation or conduct.

It is also noted while a permanent declaration of a protected environmental must be 'prepared' in accordance with the regulations, there is no such requirement in relation to a temporary declaration of a protected environmental area under s.35 of the Act, indicating a lesser regulatory involvement for temporary declarations.

Response:

Section 36(2) of the Act states that "a permanent declaration must be prepared in accordance with the regulations". Section 38(3) of the Act states that "a declaration must be prepared in accordance with the regulations".

Section 39(4) of the Act states that "a revocation of a declaration under this Division must be in accordance with the regulations".

DEPWS acknowledges the slight difference in language between sections 36(2), and 38(3), and 39(4) in respect of "prepared in accordance" and simply "in accordance". Notwithstanding the slight difference in language there is no intended difference in the operation of these sections. However, in recognition of the potential for uncertainty in interpretation to arise from this inconsistency, DEPWS will seek to amend section 39(4) to align the wording in future reforms to the Act.

To the extent that section 39(4) or (more broadly) section 293(1) of the Act may be unclear in the breadth of the powers to prescribe certain matters in the Regulations, this is clarified by section 65(1)(b) of the *Interpretation Act 1978* which identifies that matters may be made in respect to any matter "necessary or convenient....for....giving effect to the Act". In respect of section 65(3) of the *Interpretation Act 1978*, the Act, and more specifically section 39(4) of the Act, does not provide any express limitation to the regulation making power.

Temporary protected environmental area declarations are designed to enable the Minister to urgently respond to an issue. Temporary declarations cannot exceed a period of 12 months, however may be replaced by

a permanent declaration. Due to the urgent and time limited nature of temporary declarations, these do not require the same public consultation as permanent declarations.

However, the Minister is required to consult with the NT EPA before making a temporary declaration under section 35(4) of the Act. Requiring the Minister to consult with the NT EPA before revoking a temporary declaration accords with this obligation. The provisions ensure that the Minister has received independent expert environmental advice prior to exercising these powers.

Query: Regulations 34 to 38

Regulations 34 to 38 deal with the revocation of a permanent declaration in relation to prohibited areas and prohibited actions. The same issue arises as to whether s.39(4) of the Act allows the prescription of the steps to be taken leading to the revocation, or whether it merely allows regulations as to the manner and form of the revocation.

Response:

To the extent that the Act may be unclear in the breadth of its powers to prescribe certain matters in the Regulations, this is clarified by section 65(1)(b) of the *Interpretation Act 1978* which identifies that matters may be made in respect to any matter "necessary or convenient....for....giving effect to the Act". In respect of section 65(3) of the *Interpretation Act 1978*, section 39(4) of the Act does not provide any express limitation to the regulation making power.

The inclusion of regulations 34 to 38 are necessary or convenient to the exercise of the powers under the Act by ensuring that there is a clear, and consultative, process for the Minister to exercise the powers contained in sections 39(2) and (3) of the Act.

Queries relating to referrals of proposed actions and strategic proposals

Query: Regulations 39 to 75

These regulations deal with referral of proposed actions and strategic proposals to the EPA under ss.48, 49 and 50(2)(c) of the Act. Subsection 55(1) provides:

> The NT EPA must consider and deal with any referral of an action or strategic proposal under this Division in accordance with the regulations. (emphasis added)

Subsection 55(4) provides:

> Without limiting subsection (1), the NT EPA must determine that an environmental impact assessment is required for a referred action or referred strategic proposal if it determines that the referred action or the actions proposed by the referred strategic proposal have the potential to have a significant impact on the environment. (emphasis added)

On the other hand, regulation 57(2)(c) provides for the EPA to recommend to the Minister that a strategic assessment be carried out, while regulation 66 provides that the Minister makes the decision as to whether the assessment is to be carried out. That does not appear to be consistent with the approach required by the Act. See also regulations 69 to 75.

Response:

The manner by which the NT EPA 'deals with' a referred action for the purposes of section 55(1) of the Act is addressed through Part 4 of the Regulations.

Part 4, Division 2 establishes that a referred action may be accepted or refused, and the NT EPA may seek further information from the proponent about the referral prior to making a decision to accept or refuse the referral.

Part 4, Division 3 establishes the obligations of the NT EPA in regards to an 'accepted' referral.

Regulation 57(2)(c) provides that the NT EPA may recommend that a strategic assessment is carried out in regards to a strategic proposal. Prior to making this recommendation, the NT EPA must consult with the Minister (regulation 61).

Part 4, Division 4 establishes the Minister's obligations in regards to receiving a recommendation for the carrying out of a strategic assessment. Under regulation 66(1), the Minister may:

(a) agree with the recommendation, including the proposed assessment method

(b) agree with the recommendation however, in certain circumstances, direct the NT EPA to determine a different assessment method, or

(c) refuse the recommendation and direct the NT EPA to carry out a standard assessment.

The effect of regulation 66(1)(c) is to ensure that an environmental impact assessment of the proposal is undertaken as per the requirements of section 55(4) of the Act. If the Minister has agreed with the NT EPA's recommendation under regulation 66(1)(a) or (b), the assessment will be conducted as a "strategic assessment". If the Minister does not agree (as per regulation 66(1)(c)) the assessment will be conducted as a "standard assessment".

Regulation 66(1)(c) is further supported by regulation 73 which establishes the obligations (including timeframes) for the NT EPA in deciding a method for impact assessment for the standard assessment.

Regulation 66 does not afford the Minister the right to determine if an assessment is to be carried out. It affords the Minister the power to determine the form of assessment (strategic or standard) in respect of a recommendation made by the NT EPA for a strategic assessment.

Regulations 69 to 75 establish a range of requirements for the Minister and NT EPA in the decision making process. This includes timeframes for making decisions (regulations 69, 72, 73), the development and publication of notices of decision and statements of reasons for decisions (regulations 70, 71 and 75). These regulations provide certainty and transparency about decisions made under Part 4 of the Regulations.

The NT EPA is required to refer consideration of "strategic assessments" to the Minister because the costs (in terms of financial costs, resources and time) associated with these types of assessments are likely to be significantly higher than "standard assessments". The Minister's refusal to accept a "strategic assessment" recommendation does not remove the requirement for impact assessment as identified through the requirements of regulations 66(1)(c) and 73 for the NT EPA to conduct a "standard assessment" or for impact assessment to be conducted as required by section 57 of the Act.

These regulations are not inconsistent with section 55 of the Act.

Query: Regulations 66 to 75

Regulations 66 to 75 deal with the Minister's decision on recommendations made by the EPA. To some extent they seem to replicate the provisions under the Act and the legislative basis for the regulations is not clear.

For example, regulation 66(2) provides that where a recommendation is made by the EPA that the Minister refuse to grant environmental approval, the Minister may accept the recommendation and refuse to grant approval.

These regulations appear to relate to a determination made by the EPA under s.55 of the Act as to whether an impact assessment is required. Compare s.57, which applies where it is determined that an assessment is required. On the other hand, s.69 of the Act deals with acceptance or refusal by the Minister, and no reference is made in the Act, in that context, to any regulatory power to prescribe what the Minister may or may not do.

Also, regulation 74 refers to the consequences where the Minister refuses 'to grant an environmental approval for a proposed action or strategic proposal under regulation 66(2)(a)'. The legislative basis for this regulation is not apparent.

Further, regulation 68 provides for a show cause process. The authority for the making of this regulation is not clear and there is a question of how it sits with the show cause process provided for under s.72 of the Act.

Response:

Part 4 of the Act (sections 42 to 59) establishes the framework for an environmental impact assessment process in the Northern Territory. Most relevantly, Division 3 (Referral and assessment) contains, amongst other matters, provisions relating to the referral of proposed actions (Subdivision 1), the consideration of referrals by the NT EPA (Subdivision 4) and the obligation of the NT EPA to carry out an environmental impact assessment process in certain circumstances (Subdivision 5).

Specifically, sections 48 and 49 of the Act create the obligation for a proponent to refer a proposed action to the NT EPA. Section 55 of the Act then specifies what the NT EPA must do in relation to the proposed action referred to it. Relevantly, section 55(1) requires the NT EPA to "consider and deal with any referral of an action or strategic proposal under this Division in accordance with the Regulations", while section 55(5) identifies that the regulations may provide for the process of considering referrals and determining if impact assessment is required.

Part 4 of the Regulations (i.e. regulations 39 to 75) establishes how the NT EPA must "consider and deal with any referral....." for the purposes of section 55(1) of the Act and is given power through section 55(5) of the Act.

In its simplest terms, Part 4 of the Regulations sets out a process for the NT EPA to consider the referral in order for it to make a determination that environmental impact assessment is, or is not, required in accordance with its responsibility to make this determination under section 55(2).

Regulations 57 and 58 identify the types of decisions that the NT EPA may make in relation to the referral.

Regulations 66 to 75 (Part 4, Division 4 of the Regulations) specifically relate to recommendations made by the NT EPA to the Minister under regulations 57 and 58. These are recommendations about the potential form of any impact assessment to be undertaken (i.e. whether the action should be assessed as a 'strategic proposal') or whether the Minister should issue an "early refusal".

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Regulation 66(2) relates to an "early refusal" decision. This is a decision by the Minister that an approval for a proposed action will be refused based on the referral information. It occurs prior to the commencement of an environmental impact assessment process and is an alternative to the conduct of that process.

The NT EPA may recommend the Minister issue an "early refusal" (under regulations 57 and 58). The Minister makes the decision to accept or not accept the NT EPA's recommendation. This power is given to the Minister because the Minister, not the NT EPA, is responsible for authorising developments. The Minister may accept the NT EPA's decision, or may direct the NT EPA to conduct an impact assessment (regulations 66(2)(a) and (b) respectively). Regulation 68 provides for a show cause process if the Minister intends to accept the NT EPA's recommendation. This ensures natural justice is provided to the proponent.

Regulation 74 provides that a proponent who has been issued with an "early refusal" is not eligible to refer substantially the same action for a period of 2 years. This has been included to prevent proponents from merely resubmitting actions that have already been identified as being unacceptable, and promotes a holistic reconsideration and review of the proposed action by the proponent.

Part 5, Division 3 of the Act (sections 68 to 74) relate to decisions of the Minister on a draft environmental approval that is provided by the NT EPA under Part 5, Division 2 (sections 63 to 67) of the Act. Part 5, Division 2 of the Act applies where the NT EPA has completed the environmental impact assessment of an action under Part 5 (regulations 76 to 155) of the Regulations.

Section 69 is therefore unrelated to the powers afforded to the Minister under Regulations 66 to 75.

Section 72 of the Act provides for a show cause process where the NT EPA has conducted an impact assessment process, recommends the Minister grant an environmental approval, and provided the Minister with a proposed draft environmental approval. There is a similar show cause process under s.78 of the Act where the NT EPA has conducted an impact assessment process, recommends the Minister refuse to grant an environmental approval, and provided the Minister with a statement of unacceptable impact.

The matters contained in Part 5, Division 2 of the Act relate to the outcomes of an environmental impact assessment that has been conducted. Part 4 of the Regulations is merely about accepting, or refusing to accept, a referral made in accordance with Part 4, Division 3 of the Act. The show cause processes under regulation 68 and those under section 72 (and section 78) of the Act are therefore unrelated and operate independently.

Regulations 66 to 75 (Part 4, Division 4 of the Regulations) relate to decisions that can be made once a referral has been made to the NT EPA and are given authority through sections 55(1), 55(4) and 293(1) of the Act. DEPWS does not hold any concerns about the scope of this authority in terms of providing a legislative basis for these regulations. However, to the extent that there may be a concern that the Act is unclear in its scope of authority, section 65(1)(b) of the *Interpretation Act 1978*, which identifies that matters may be made in respect to any matter "necessary or convenient....for....giving effect to the Act", applies. These regulations are either necessary or convenient for given effect to the Act and its objects (refer section 3 of the Act).

Queries relating to environmental impact assessment reports

Query: Regulation 156(3)

Regulation 156(3) sets out the purpose of the report prepared on completion of the environmental impact assessment process, while reg.156(4) sets out the matters the report must assess. Other than s.57 of the Act, which requires the assessment to be carried out in accordance with the regulations, there is no

regulatory prescription in relation to the assessment report. It is not clear how subregulations 156(3) and (4) sit with s.42 of the Act, which expresses in different terms the purpose of the environmental impact process. There is a question of why the purpose of the assessment report should not reflect the purpose of the environmental impact process itself.

Response:

Section 42 of the Act provides the broad parameters about why environmental impact assessments are undertaken. That is, it identifies the intent behind conducting an environmental impact assessment process.

Section 42, and the accompanying section 43, of the Act provide a point of reference (or framing) in which environmental impact assessments are to be conducted.

Regulation 156 identifies the purpose of the assessment report in informing the Minister about the outcomes of the environmental impact assessment process. An assessment report is about collating and analysing the information obtained during the environmental impact assessment process in order to inform the Minister about the overall environmental acceptability of the proposal taking into account its environmental risks and impacts, and the nature and extent of residual impacts associated with the proposal.

Regulation 156(1) identifies that an assessment report is the final step in the environmental impact assessment process (which is given purpose by section 42 of the Act). Regulations 156(3) and (4) provide finer detail and guidance as to the specific purpose, and therefore content, of assessment reports.

As the assessment report is only a step in the assessment process, the purpose of the report can be narrowed to ensure that these reports provide the type of information relevant to inform the Minister's approval (or refusal) decision. Regulations 156(3) and (4) do not limit the content of assessment reports but rather provide direction as to the minimum requirements of those reports in the context of a completed impact assessment process.

The assessment report does not need to reflect the purpose of the impact assessment process itself because it is only a component of the process. Because s.42 identifies the purpose of a process, it is, by necessity, broad and all-encompassing; whereas regulation 156 describes an output of the process and is therefore focussed to the information that is required to inform decision making.

Queries relating to the significant variations of proposals

Query: Regulations 217(1) and 219 to 221

The relationship between these regulations is not clear. Reg.217(1) provides that the EPA may accept or refuse to accept a referral of a significant variation under s.52 of the Act for a strategic assessment 'if it considers it appropriate to do so'. On the other hand, reg.'s 219-221 set out the specific basis on which the EPA may refuse to accept such a referral. That also begs the question of whether it is within the contemplation of the legislation that the EPA could refuse to accept a referral simply on the basis that 'it considers it appropriate to do so', particularly given provisions such as s.55(2) and s.106(1)(b) of the Act.

Response:

Regulations 216 and 217 operate in partnership with regulations 219 and 220.

Regulation 216 provides that the NT EPA must accept or refuse a referral of a significant variation for a standard assessment if the approval was granted on the basis of a standard assessment.

Regulation 217 provides that the NT EPA may accept or refuse a referral of a strategic variation for a strategic assessment 'if it considers it appropriate to do so'.

Regulation 218 relates to approval holder initiated environmental impact statement (EIS) referrals.

Regulation 219 provides general grounds for refusal that may apply to a referral under regulations 216, 217 or 218.

Regulation 217 is drafted in terms of 'appropriate to do so' because of the need to provide flexibility to the NT EPA in terms of accepting or refusing referrals for strategic assessment as either a "strategic assessment" or "standard assessment" as demonstrated by regulation 220. That regulation provides the specific ground that a referral of a significant variation for a strategic assessment can be refused if a standard assessment is more appropriate, and allows the NT EPA to accept the referral as a standard assessment.

The term 'appropriate to do so' in regulation 217 is limited by the grounds of refusal in regulations 219 and 220.

Query: Regulation 227

Part 7 Division 3 of the regulations provides for the process for referral of a significant variation after environmental approval has been granted. This is dealt with at s.106 to s.108 of the Act. Section 106(1)(b) provides that the Minister may amend an environmental approval 'on the recommendation of the NT EPA as a result of an environmental impact assessment of a significant variation of an action or strategic proposal – in accordance with the regulations' (emphasis added). On the other hand, reg.227(1)(b) provides that the EPA may 'decide' whether 'the environmental impact of the variation can be managed through amendments to the approval'. By regulations 228 and 229 the EPA must give the approval holder notice of the 'decision' and publish the 'decision'. The use of the term 'decision' is potentially confusing, given that the EPA ultimately makes only a recommendation to the Minister, even allowing for the implicit acknowledgment at reg.230(2)(b) that in fact the EPA is only making a recommendation.

Response:

Part 5, Division 9 (sections 106 to 108) of the Act outlines the powers and obligations of the Minister to amend an environmental approval that has been issued under Part 5, Division 3 of the Act.

Section 106(1)(b) is an explicit power for the Minister to amend a granted approval on the recommendation of the NT EPA (as a result of the assessment of a significant variation).

Regulation 227(1) applies to a significant variation that has been referred to the NT EPA after the Minister has granted an environmental approval (under Part 5, Division 3 of the Act).

Regulation 227(1) provides that the NT EPA must consider the significant variation and decide whether:

(a) the environmental impact of the variation can be managed through the existing conditions of the environmental approval; or

(b) the environmental impact of the variation can be managed through amendments to the environmental approval; or

(c) the environmental impacts of the variation are such that a new environmental impact assessment of the variation is required.

Under regulation 227(1)(b) the NT EPA is making a determination as to whether the existing (already granted) environmental approval could be amended to manage the environmental impacts associated with the significant variation. This is a decision of the NT EPA.

Under regulation 228, the NT EPA then provides a notice of the decision (i.e. the NT EPA's determination) to the approval holder and a statement of reasons for the decision.

Regulations 230(2) and (3) and 233 identify the process for the NT EPA to follow if it has made a decision under regulation 227(1)(b) to inform the Minister about the NT EPA's decision.

The NT EPA has to make a decision about the capacity for (or capability of) an amended environmental approval to manage the environmental impacts identified in the significant variation. It must also make a decision about the nature of the amendments required to the environmental approval in order to manage those impacts. It can only make a recommendation to the Minister if it has first satisfied itself of, and therefore made a 'decision' about, the appropriateness of an existing approval or the need to amend an approval.

As demonstrated by Part 5 of the Act, the NT EPA is not intended to make final decisions about the grant of an environmental approval or about the conditions of the approval. It is however expected to prepare draft approvals (and draft amendments to approvals) to inform a final decision by the Minister.

As noted in the query, once the NT EPA has made its decision about the capacity of an amended environmental approval to manage the impacts identified in the significant variation, the NT EPA provides this 'decision' to the Minister under regulation 230(2). The Minister receives this 'decision' as a 'recommendation' under section 106(1)(b).

DEPWS notes the concerns that the word 'decision' in the relevant regulations may potentially be confusing, however considers that the word 'decision' is correct and necessary in this context. DEPWS will nevertheless consider the approach to Part 7, Division 3 (specifically regulation 230) of the Regulations and Part 5, Division 9 (specifically section 106) of the Act to determine whether the provisions could be amended to reduce the potential for confusion that has been identified.

Queries relating to environment protection bonds

Query: Regulation 234(5)

Sections 127 to 132 or the Act provide for environmental protection bonds. It can be a condition of environmental approval that a person pay an environmental protection bond, which can be called upon where the approval holder causes environmental harm. By s.129 of the Act, the amount or value of the bond in each case is determined by the Minister. By s.129(5), allowance may be made for the amount of the bond to be recalculated at different stages of the action to which the environmental approval applies. By s.131(2) any claim made on the bond by the Minister or CEO (for example where the Minister or CEO incurs expenses as a result of environmental harm) must be made in accordance with the regulations. Such provision is made at reg.234. However, reg.234(5) goes further, providing:

> If the amount of bond is less than the reasonable costs and expenses incurred by the Minister or the CEO to which the claim applies, the recovery of an amount of bond does not prevent the Minister or CEO from recovering the remaining costs and expenses from the approval holder. (emphasis added)

This seems to go beyond a regulation relating to how a claim on the bond is to be made. It is noted that by s.293(2)(b) of the Act, regulations may 'provide for the recovery of costs incurred by the Minister, the CEO or the NT EPA under or for this Act'. The term 'costs and expenses' and 'costs or expenses' is used in several sections of the Act, whereas the regulatory power relates to the recovery of 'costs' only. It is also noted that the legal foundation for any additional claim is not made clear in the regulation.

Response:

Section 293(1) of the Act provides that "the Administrator may make regulations under this Act". Section 293(2) goes on to identify a number of specific matters about which regulations can be made. This includes "(b) provide for the recovery of costs incurred by the Minister, the CEO or the NT EPA under or for this Act".

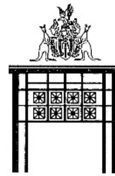
Section 293(2)(b) is a clarification provision; not a limiting provision. The use of the term 'costs and expenses' in regulation 234(5) is provided authority under section 65 of the *Interpretation Act 1978*.

Regulation 234(5) is a clarification provision that has been included to avoid confusion over whether costs and expenses that have been incurred and which are not covered by the environmental bond may be recovered.

Such costs and expenses could be recovered in a number of ways, for example, through simple issue of an invoice to the approval holder. Should such an invoice not be paid, the CEO would have recourse to usual debt collection processes. Alternatively, section 236 of the Act provides that the CEO may apply to the Court for a range of orders in relation to a contravention of the Act. Under section 236(b) this can include an order for payment of reasonable costs and expenses incurred by the CEO in remediating or rehabilitating the environment as a result of environment harm. This power could be used in conjunction with calling on an environmental bond to obtain payment of any costs or expenses that exceed the bond if necessary.

DEPWS acknowledges that these options may result in timely and costly processes. Nevertheless, the issue of an invoice, followed by debt collection should it remain unpaid, is a standard approach to recouping costs. DEPWS will investigate whether it may be possible to include a more streamlined, statutory, process for seeking payment of costs and expenses that exceed any environmental bond in either the Act or Regulations.

Plant Health Amendment Regulations No. 18 of 2020



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.12

Hon Nicole Manison MLA
Minister for Agribusiness and Aquaculture
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear ~~Minister~~ Nicole,

Re: Plant Health Amendment Regulations (No. 18 of 2020)

The Legal and Constitutional Affairs Committee is considering the Plant Health Amendment Regulations (No. 18 of 2020) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issue raised in relation to export permits.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 12 March 2021.

Thank you for your assistance.

Yours sincerely

Mr Joel Bowden MLA
Chair

17 February 2021

GPO Box 3721, DARWIN NT 0801
Telephone: 08 8946 1485 e-mail: LA.Committees@nt.gov.au

Advice from Prof Ned Aughterson to the Legal and Constitutional Affairs Committee

Plant Health Amendment Regulations (No. 18 of 2020)

Reg 27:[1] in the interests of controlling declared pests, a 'government certificate' or 'interstate assurance certificate' is required in specified circumstances where plant material or related equipment is to be introduced into the Territory. Regulation 27 provides that the certificate 'must be in force at the time of introduction'. There are also regulations prohibiting export from the Territory of certain material except in accordance with an 'export permit': as to the issuing of an export permit, see reg 36A. In relation to export permits, there is no provision equivalent to reg 27 requiring that the permit be in force at the time of export – or will that requirement be evident from the terms of the conditions relating to the permit?

[1] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

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Mr Joel Bowden MLA
Chair
Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Email: LA.Committees@nt.gov.au

Dear Mr Bowden Joel,

Thank you for your correspondence dated 17 February 2021, requesting clarification on the necessity for an 'in force' provision relating to the status of export permits provided for under Regulation 36A of the Plant Health Amendment Regulations (No. 18 of 2020). I have consulted with the Department of Industry, Tourism and Trade and am pleased to provide the following advice.

The 'government certificate' and 'interstate assurance certificate' referred to in regulation 27 are issued by government officials or accredited industry businesses respectively in another jurisdiction. These certificates may be used to cover specific consignments of plants or plant-related material being exported to the Northern Territory. This is generally a condition of entry for those plants and plant-related materials that present an unacceptable risk of carrying or vectoring harmful pests into the Territory. A certificate will essentially certify that the pre-export conditions required by the Territory for that consignment have been met prior to export.

While containing a minimum number of fields agreed to nationally between the jurisdictions, these certificates may also include additional details, e.g. branding, that are unique to the exporting jurisdiction. It is the exporting jurisdiction's responsibility to ensure that certificates in use are current and that old versions are removed from the system. The NT Government has no responsibility for the overall design of other jurisdictions' certificates; our interest is ensuring that only current certificates or those 'in force' are in use in those jurisdictions.

On the other hand, the 'export permits' referred to in regulation 36A are permits issued by the NT Government that enable businesses to export consignments of plants and plant-related materials to other jurisdictions. These are typically necessary only where a given plant or plant-related material presents a clear risk of vectoring or carrying specified high-impact pests to another jurisdiction, and they provide the NT Government with a means of enabling these exports to occur in a manner that does not present an unacceptable risk to the importing jurisdiction.

As Export permits are issued by the NT Government, their currency is known and as such, the 'in force' clause is not required.

If the Committee has any further queries on this matter, the relevant departmental contact is Dr Anne Walters who may be contacted on 8999 2188 and via email at anne.walters@nt.gov.au

Yours sincerely

NICOLE MANISON

15 MAR 2021

Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.13

Hon Lauren Moss MLA
Minister for Education
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear ~~Minister~~ Lauren,

Re: Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020

The Legal and Constitutional Affairs Committee is considering the Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020 in accordance with Standing Order 176(3).

The Committee has received the attached comments on the by-laws from its independent legal counsel and seeks your advice on the issues.

To enable the Committee to complete its consideration of the by-laws before the end of their disallowance period, the Committee requests this advice by 12 March 2021.

Thank you for your assistance.

Yours sincerely

Mr Joel Bowden MLA
Chair

17 February 2021

GPO Box 3721, DARWIN NT 0801

Telephone: 08 8946 1485 e-mail: LA.Committees@nt.gov.au

Advice from Prof Ned Aughterson to the Legal and Constitutional Affairs Committee

Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020

By-Law 5(1):[1] This by-law provides:

> The object of the gift fund is to receive donations to support the Council in carrying out the functions of the Institute as set out in section 10(1) of the Act. (emphasis added)

The by-law refers to the functions of 'the institute', as set out in s 10(1) of the Act (*Batchelor Institute of Indigenous Tertiary Education Act*). However, s 10(1) of the Act deals with the functions and powers of the Council, rather than the Institute. The functions of the Institute are dealt with in s 7 of the Act. That covers a broader field and would seem to be the proper focus for the use of gift monies. (see also by-law 7 re reference to s 10(1) of the Act). It is noted that under the *Batchelor Institute of Indigenous Education (Deductible Gift-Recipient) By-Laws 2020*, which deals with the requirement to make provision for the transfer of any surplus gifts in the event of the Institution being wound up or dissolved or where its deductible gift recipient status is revoked, different terminology is used. At by-law 3(2)(a) of those by-laws reference is made to gifts of money or property 'for the principal purpose of the institute'.

By-Laws 4(2) and 5(3):[2] both of these by-laws deal with the maintenance of the gift fund and the use that can be made of money and property received. By-law 4(2) provides:

> The gift fund will not be maintained for the purposes of profit or gain to the Institute or the management committee and the gifts, contributions or property received by the gift fund and any money received because of the gifts or contributions must be applied solely towards the promotion of the objects of the gift fund under clause 5(1).

By-law 5(3) provides:

> The gift fund must not be used for the purposes of profit or gain for the Institute (or the management committee) and the income and property of the gift fund, from whatever source derived, must be applied solely towards the of the objects of the gift fund as set out in clause 5(1).

By-law 5(1) provides:

> The object of the gift fund is to receive donations to support the Council in carrying out the functions of the Institute as set out in section 10(1) of the Act.

The following observations are made:

(i) What is meant by the fund not being maintained or used for the profit or gain of the Institute? If the fund is to be applied consistent with the objects set out in by-law 5(1) and the functions set out in s 7 or 10(1) of the Act, why would that not be for the a 'gain' of the Institute? (as distinct from gain to an individual within the Institute – perhaps that was intended?). See also by-law 4(3).

(ii) Effectively, 4(2) and 5(3) cover the same field. Though the initial wording of 4(2) refers to 'maintenance' of the fund while 5(3) refers to 'use' of the fund, both deal with how the money or property of the fund may be used. That raises the question of why different wording is used, given the presumption that if different wording is used there is a different intention as to meaning. For example, 4(2)

[1] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)
[2] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

refers to use to be made of 'gifts, contributions or property received' and 'any money received because of the gifts or contributions', while 5(3) refers to 'the income and property ... from whatever source derived'. Do they refer to different things? Alternatively, why is there not the one self-contained specification as to the use to be made of any money or property?

(iii) In the last line of 5(3), the word 'promotion' has been omitted: see 5(2).

By-Laws 6(1) and 6(2):[3] By-laws 6(1) and 6(2) provide:

(1) The gift fund will be administered by a committee of not less than three persons appointed by the Council, at least two of whom must be responsible persons. (emphasis added)

(2) The initial members of the management committee will be persons holding the following positions at the Institute:

a. Chief Financial Officer;

b. Chief Operating Officer; and

c. Manager Financial Services

The term 'responsible person' is defined in by-law 3 to mean an individual who:

(a) performs a significant public function;

(b) is a member of a professional body having a code of ethics or rules of conduct;

(c) is officially charged with spiritual functions by a religious institution;

(d) is a director of a company whose shares are listed on the Australian Stock Exchange;

(e) has received formal recognition from government for services Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-laws 2020 2 to the community; or

(f) is approved as a responsible person by the Commissioner of Taxation under the Income Tax Assessment Act 1997 (Cth)

The following observations are made:

(i) What is the inter-relationship between 6(1) ('responsible persons') and 6(2)? Are all or any of the officers referred to in 6(2) 'responsible persons' within the meaning of by-law 3?

(ii) What is meant by the term 'initial' members in 6(2). Are they intended to be members for a set period and, if so, for what period; are they 'initial members' for however long the present occupants hold those positions at the Institute; what happens if one of them ceases to hold that position, do the three of them then cease to be the 'initial members' or is one only replaced? If the latter and the remaining two are not 'responsible persons', there would be non-compliance with 6(1) (which requires two 'responsible persons').

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[3] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

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Mr Joel Bowden MLA
Chair
Legal and Constitutional Affairs Committee
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Email: LA.Committees@nt.gov.au

Dear Mr Bowden

Thank you for your correspondence of 17 February 2021 seeking advice on a number of issues raised in the Legal and Constitutional Affairs Committee's consideration of the Batchelor Institute of Indigenous Tertiary Education (BIITE) Gift Fund By-Laws 2020. In drafting the by-laws, BIITE sought independent legal advice from Cozens Johansen.

BIITE's response to the committee's queries is provided. I understand that legal advice from Cozens Johansen was sought in the preparation of the response. Cozens Johansen agree that some provisions could be re-drafted to enhance clarity of meaning, and has provided the reasoning behind the by-laws having been drafted as they are.

I look forward to the committee's response, including any recommended action, on the matters raised.

Yours sincerely

LAUREN MOSS
12 MAR 2021

Batchelor Institute of *Indigenous Tertiary Education (Gift Fund) By-Laws 2020*

Advice from Prof Ned Aughertson, William Foster Chambers, to the Legal and Constitutional Affairs Committee

By-Law 5(1):[1] This by-law provides:

> The object of the gift fund is to receive donations to support the Council in carrying out the functions of the Institute as set out in section 10(1) of the Act. (emphasis added)

The by-law refers to the functions of 'the institute', as set out in s 10(1) of the Act *(Batchelor Institute of Indigenous Tertiary Education Act)*. However, s 10(1) of the Act deals with the functions and powers of the Council, rather than the Institute. The functions of the Institute are dealt with in s 7 of the Act. That covers a broader field and would seem to be the proper focus for the use of gift monies. (see also by-law 7 re reference to s 10(1) of the Act). It is noted that under the *Batchelor Institute of Indigenous Education (Deductible Gift-Recipient) By-Laws* 2020, which deals with the requirement to make provision for the transfer of any surplus gifts in the event of the Institution being wound up or dissolved or where its deductible gift recipient status is revoked, different terminology is used. At by-law 3(2)(a) of those by-laws reference is made to gifts of money or property 'for the principal purpose of the institute'.

Response from Cozens Johansen: On reflection, we agree that the reference should be to section 7(1) of the Act not 10(1) of the Act.

By-Laws 4(2) and 5(3):[2] both of these by-laws deal with the maintenance of the gift fund and the use that can be made of money and property received. By-law 4(2) provides:

> The gift fund will not be maintained for the purposes of profit or gain to the Institute or the management committee and the gifts, contributions or property received by the gift fund and any money received because of the gifts or contributions must be applied solely towards the promotion of the objects of the gift fund under clause 5(1).

By-law 5(3) provides:

> The gift fund must not be used for the purposes of profit or gain for the Institute (or the management committee) and the income and property of the gift fund, from whatever source derived, must be applied solely towards the of the objects of the gift fund as set out in clause 5(1).

By-law 5(1) provides:

> The object of the gift fund is to receive donations to support the Council in carrying out the functions of the Institute as set out in section 10(1) of the Act.

The following observations are made:

(i) What is meant by the fund not being maintained or used for the profit or gain of the Institute? If the fund is to be applied consistent with the objects set out in by-law 5(1) and the functions set out in s 7 or 10(1) of the Act, why would that not be for the a 'gain' of the Institute? (as distinct from gain to an individual within the Institute- perhaps that was intended?). See also by-law 4(3).

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[1] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

[2] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

Response from Cozens Johansen: We developed these bylaws in close co-operation with the ATO to ensure that they are compliant with ATO requirements. The terminology used is essentially what was suggested by the ATO. The ATO requirements regarding gift funds are complex. Essentially the organisation is required to treat money in the gift fund as separate from funds of the organisation. Money or property of a gift fund should not be mixed with other money or property of the organisation (unless pursuant to a specific approved transaction). Any substantive changes to these provisions (which are aimed at ATO compliance) would require detailed consideration and ATO review and approval.

(ii) Effectively, 4(2) and 5(3) cover the same field. Though the initial wording of 4(2) refers to 'maintenance' of the fund while 5(3) refers to 'use' of the fund, both deal with how the money or property of the fund may be used. That raises the question of why different wording is used, given the presumption that if different wording is used there is a different intention as to meaning. For example, 4(2)

refers to use to be made of 'gifts, contributions or property received' and 'any money received because of the gifts or contributions', while 5(3) refers to 'the income and property ... from whatever source derived'. Do they refer to different things? Alternatively, why is there not the one self-contained specification as to the use to be made of any money or property?

Response from Cozens Johansen: It is acknowledged that there is *some* unnecessary double-up. However, the clauses do deal with different matters – specifically clause 5(3) deal with income of property of the gift fund (ie interest received) as well as money received while clause 4(2) deals with money received. If the by-laws are amended, these clauses could be consolidated / merged.

(iii) In the last line of 5(3), the word 'promotion' has been omitted: see 5(2).

Response from Cozens Johansen: We assume you are referring to 5(3) and

4(2). As above, if the by-laws are amended, these clauses could be consolidated

/ merged.

By-Laws 6(1) and 6(2):[3] By-laws 6(1) and 6(2) provide:

(1) The gift fund will be administered by a committee of not less than three persons appointed by the Council, at least two of whom must be responsible persons. (emphasis added)

(2) The initial members of the management committee will be persons holding the following positions at the Institute:

a. Chief Financial Officer;

b. Chief Operating Officer; and c.

Manager Financial Services

The term 'responsible person' is defined in by-law 3 to mean an individual who:

(a) performs a significant public function;

(b) is a member of a professional body having a code of ethics or rules of conduct;

(c) is officially charged with spiritual functions by a religious institution;

[3] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

(d) is a director of a company whose shares are listed on the Australian Stock Exchange;

(e) has received formal recognition from government for services Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-laws 2020 2 to the community; or

(f) is approved as a responsible person by the Commissioner of Taxation under the Income Tax Assessment Act 1997 (Cth)

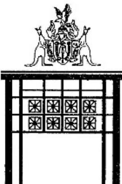
The following observations are made:

(i) What is the inter-relationship between 6(1) ('responsible persons') and 6(2)? Are all or any of the officers referred to in 6(2) 'responsible persons' within the meaning of by-law 3?

Response from Cozens Johansen: Clause 6(1) and 6(2) are inter-related because persons in the named positions (Ms Esnart Nyemba (COO), Ms Jacelyn Montero (CFO) and Mr Gian Rimbaud (Manager Financial Services) likely all meet the definition of a responsible person.

Responses from Cozens Johansen highlighted in yellow:

(ii) What is meant by the term 'initial' members in 6(2). " initial" is not defined so it has its ordinary meaning (existing or occurring at the beginning). Are they intended to be members for a set period and, if so, for what period; They hold their positions until replaced by the Council in accordance with clause 6(4). are they 'initial members' for however long the present occupants hold those positions at the Institute; They hold their positions until replaced by the Council in accordance with clause 6(4). what happens if one of them ceases to hold that position, do the three of them then cease to be the 'initial members' or is one only replaced? If one ceases to hold that position, the Council should replace them accordance with clause 6(4). If the latter and the remaining two are not 'responsible persons', there would be non-compliance with 6(1) (which requires two 'responsible persons'). The three listed are likely all responsible persons.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.18

Hon Lauren Moss MLA
Minister for Education
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020

Thank you for your correspondence of 12 March 2021 responding to concerns raised by the Committee regarding the Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2021.

In relation to recommended action on the matters raised, having considered the advice provided by Cozens Johansen the Committee is of the view that:

1. By-Law 5(1) should be amended to correct the reference to the Act from section 10(1) to section 7(1).
2. By-Law 5(3) should be amended to correct the omission identified in the last line of the by-law by inserting the word 'promotion'.

Further, the Committee requests that you advise it as to the anticipated timeframe to effect these amendments. I look forward to your response.

Yours sincerely

Mr Joel Bowden MLA
Chair

23 March 2021

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Mr Joel Bowden, MLA
Chair, Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory
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Dear Mr Bowden, Joel

Thank you for your correspondence of 23 March 2021 addressing Batchelor Institute of Indigenous Tertiary Education's (BIITE) response to the issues raised by the Legal and Constitutional Affairs Committee when considering the BIITE Gift-fund By-Laws 2020.

The advice relating to required amendments to the BIITE Gift-fund By-Laws 2020 provided by the Committee has been forwarded to BIITE for action. BIITE expects the amended Gift-fund By-Laws 2020 to be ready for deemed tabling in Parliament at the sittings commencing on 10 August 2020.

Yours sincerely

LAUREN MOSS
20/4/2021

Petroleum Regulations No. 31 of 2020

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.19

Hon Nicole Manison MLA
Minister for Mining and Industry
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Petroleum Regulations (No. 31 of 2020)

The Legal and Constitutional Affairs Committee is considering the Petroleum Regulations (No. 31 of 2020) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 16 April 2021.

Thank you for your assistance.

Yours sincerely

Mr Joel Bowden MLA
Chair

23 March 2021

GPO Box 3721, DARWIN NT 0801
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Advice from Prof Ned Aughterson to the Legal and Constitutional Affairs Committee

Petroleum Regulations (No. 31 of 2020)

Reg. 18:[1] Part 4 deals with access agreements between the holder of a petroleum interest and the 'designated person' (owner or registered occupier of the land). Regulation 16 provides a process for negotiation of an agreement between those parties. Regulations 18 and 19 allow for an ADR process under Division 4 Subdivision 2 where the parties cannot agree on an access agreement 'within the period for negotiation' under regulation 16. The difficulty is that regulation 16 does not provide a clear outer limit for the period of negotiation. Regulation 16(2)(a) refers to a period of 'at least' 60 days. While regulation 16(2)(b) states that a longer period may be agreed between the parties, that begs the question of why the term 'at least' is used in 16(2)(a). As framed, the provision might give rise to uncertainty as to when the negotiation period has expired and hence when ADR might be invoked.

Reg. 33:[2] by regulation 30, an access agreement does not allow access to relevant land unless either approved by the Minister or there is a determination by the Tribunal. If the latter, approval of the Minister is not required. Regulation 34 provides for the registration of approved access agreements. However, reg. 34(1) refers only to agreements that have been approved by the Minister. For those agreements, the Minister must take steps to register the agreement 'within a reasonable time'. While reg. 33 provides for application to be made to the Minister for registration of agreements that arise on account of a Tribunal determination, there is no provision equivalent to s 34(1) requiring registration within a reasonable time. It is noted that while regulation 30(2) provides that an agreement that arises on account of a Tribunal determination 'is taken to be an approved access agreement', it is not taken to have been approved by the Minister, such that would enable it to come within reg. 34(1). It is also noted that by reg. 34(2), the Minister 'may' register an agreement in such manner as the Minister considers appropriate. In that context, reference is made at reg. 34(2)(e)(ii) agreements arising by Tribunal determination.

Reg. 41:[3] by regulation 40(2)(c), the Tribunal may terminate an approved access agreement where there has been a 'material breach' of the agreement. What happens where the petroleum interest has not expired? Can a fresh access agreement be entered into, or, if there is an assignment of the petroleum interest, can the new interest holder seek a separate access agreement?

Reg. 46:[4] where there is an existing access agreement and there is a dispute in relation to that agreement, reg. 46 provides for the conduct of a conference, facilitated by an 'authorised officer', to assist in the resolution of the dispute. By reg. 46(1), the authorised officer may adopt such processes as considered appropriate. Presumably, that process might take the form of a mediation and include private sessions with one or other of the parties. Yet, this regulation does not include provisions equivalent to those pertaining to the ADR process under Part 4, Division 4, Subdivision 2, which arises where there is a dispute going to the formation of the access agreement. In particular, reg. 25(6)(d) imposes confidentiality obligations on the ADR convenor, while reg. 27 provides that evidence of anything said in the course of the ADR is inadmissible in a proceeding before the Tribunal, other than with the consent of the parties. As to the latter, see reg. 40(1)(b). Confidentiality issues also arise, but are not protected, in the context of any report prepared on the outcome of the conference: see reg. 46(6). That report is given to both parties, as well as to the CEO: reg. 46(8).

[1] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).
[2] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).
[3] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).
[4] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b).

Schedule 2, clause 7:[5] consent/agreement is required for the construction of a fence, gate etc. by the interest holder. For evidential purposes, there is a question of whether any such consent/agreement should be in writing.

Schedule 2, clause 14:[6] this provides for the payment of compensation to the owner/occupier by the interest holder, where harm is caused 'to the owner/occupier's land'. It includes an obligation to make good (or to pay compensation to the owner/occupier where it is not reasonably possible to rectify) any harm or damage to 'any water on or under the owner/occupiers land'. Does that include harm to the water table and groundwater that passes/sit below the owner/occupier's land? Acknowledging that I have no expertise in this area, it is imagined that the damage in actual and financial terms could be immense.

It is also noted that the provision is not framed as damage to the owner/occupier's *interest in* the land (that is, their actual loss arising from the damage), but rather more broadly as liability for damage to the land/water. Further, given that compensation is not tied to loss, how is any compensation to be divided between the owner and the occupier where they are not the same person?

[5] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

[6] Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

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Mr Joel Bowden MLA
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Dear Mr Bowden

Thank you for your letter of 23 March 2021, seeking advice on issues raised by Professor Ned Aughterson, independent legal counsel, regarding the *Petroleum Regulations 2020* which commenced on 1 January 2021.

The Department of Industry, Tourism and Trade has prepared the enclosed response to each item identified by the independent legal counsel. I trust that the response adequately deals with the issues raised by the Legal and Constitutional Affairs Committee.

Should the Committee need any further clarification, please don't hesitate to contact Mr James Pratt, Senior Executive Director, Energy Development, Department of Industry, Tourism and Trade on (08) 8999 6567 or email james.pratt@nt.gov.au.

Yours sincerely

NICOLE MANISON

16 APR 2021

Response to concerns raised by the independent legal counsel for the Legal and Constitutional Affairs Committee in relation to the Petroleum Regulations 2020

Regulation	Concern	Response
18	Part 4 deals with access agreements between the holder of a petroleum interest and the 'designated person' (owner or registered occupier of the land). Regulation 16 provides a process for negotiation of an agreement between those parties. Regulations 18 and 19 allow for an ADR process under Division 4 Subdivision 2 where the parties cannot agree on an access agreement 'within the period for negotiation' under regulation 16. The difficulty is that regulation 16 does not provide a clear outer limit for the period of negotiation. Regulation 16(2)(a) refers to a period of 'at least' 60 days. While regulation 16(2)(b) states that a longer period may be agreed between the parties, that begs the question of why the term 'at least' is used in 16(2)(a). As framed, the provision might give rise to uncertainty as to when the negotiation period has expired and hence when ADR might be invoked.	As noted by the independent legal counsel, the *Petroleum Regulations 2020* deliberately provide for a minimum period for negotiation (at least 60 days) but also allows for the parties to agree a longer period for negotiation if that will assist in the parties reaching an access agreement. This provision is designed to be facilitative to assist the parties to reach an agreement independently. Regulation 18 applies if an interest holder and a designated person cannot agree on an access agreement within the period for negotiation under regulation 16. The issue of what the period for negotiation is, and therefore when it expires, is not uncertain. The period for negotiation is only longer than 60 days under regulation 16(2)(b) if the parties agree — whether something has been agreed is a matter of evidence and for the parties (noting the Department is publishing guidance material which includes that these matters should be documented in writing). If the parties have not agreed to a longer period for negotiation then, at any time after the 60 days has lapsed, the interest holder may seek to undertake alternative dispute resolution with the designated person under regulation 18.
33	By regulation 30, an access agreement does not allow access to relevant land unless either approved by the Minister or there is a determination by the Tribunal. If the latter, approval of the Minister is not required. Regulation 34 provides for the registration of approved access agreements. However, reg. 34(1) refers only to agreements that have been approved by the Minister. For those agreements, the Minister must take steps to register the agreement 'within a reasonable time'. While reg. 33 provides for application to be made to the Minister for registration of agreements that arise on account of a Tribunal determination, there is no provision equivalent to s 34(1) requiring registration within a reasonable time.	Regulation 33 requires the interest holder to apply to register an access agreement determined by the Tribunal. The interest holder must apply to register such an agreement and the Minister would, in accordance with appropriate administrative processes (and as required by law), deal with that application in due course and within a reasonable time. It is reasonable to assume that the Minister will act in accordance with recognised principles of administrative law and, in this context, will act reasonably. This is in contrast to an agreement agreed between the parties (and requiring Ministerial approval) — in that case the Minister already has the relevant agreement (because it has been approved under regulation 31).

Regulation	Concern	Response
	It is noted that while regulation 30(2) provides that an agreement that arises on account of a Tribunal determination is taken to be an approved access agreement', it is not taken to have been approved by the Minister, such that would enable it to come within reg. 34(1). It is also noted that by reg. 34(2), the Minister 'may' register an agreement in such manner as the Minister considers appropriate. In that context, reference is made at reg. 34(2)(e)(ii) agreements arising by Tribunal determination.	Regulation 34 is a directive to the Minister, to register such an agreement within a reasonable time, in the absence of a specific application (as a specific application is not required under the *Petroleum Regulations 2020*). As noted by the independent legal counsel, regulation 34 clearly envisages that the registration process applies to those access agreements which are determined by the Tribunal and such agreements should be registered on the register (see regulation 34(2)(e)(ii)).
41	By regulation 40(2)(c), the Tribunal may terminate an approved access agreement where there has been a 'material breach' of the agreement. What happens where the petroleum interest has not expired? Can a fresh access agreement be entered into, or, if there is an assignment of the petroleum interest, can the new interest holder seek a separate access agreement?	As a matter of policy (and of law), an approved access agreement is not required for the grant of a petroleum interest or prior to undertaking all forms of petroleum activities (an agreement is only required for regulated operations). If an access agreement is reached and then subsequently terminated by the Tribunal for 'material breach' it would be expected that, if regulated operations still needed to be undertaken, then a new access agreement would be need to be reached and the processes under the *Petroleum Regulations 2020* would need to be undertaken. The *Petroleum Regulations 2020* provide limited exemptions from the requirement for an approved access agreement in place at regulation 8 which includes, for example, in an emergency situation or threatened emergency situation. As to the issue of assignment or transfer of a petroleum interest; that requires Ministerial consent under section 93 of the *Petroleum Act 1984*. Additionally regulation 13(2) provides for the situation where a petroleum interest is transferred and its impact on any approved access agreement.

Regulation	Concern	Response
46	Where there is an existing access agreement and there is a dispute in relation to that agreement, reg. 46 provides for the conduct of a conference, facilitated by an 'authorised officer', to assist in the resolution of the dispute. By reg. 46(1), the authorised officer may adopt such processes as considered appropriate. Presumably, that process might take the form of a mediation and include private sessions with one or other of the parties. Yet, this regulation does not include provisions equivalent to those pertaining to the ADR process under Part 4, Division 4, Subdivision 2, which arises where there is a dispute going to the formation of the access agreement. In particular, reg. 25(6)(d) imposes confidentiality obligations on the ADR convenor, while reg. 27 provides that evidence of anything said in the course of the ADR is inadmissible in a proceeding before the Tribunal, other than with the consent of the parties. As to the latter, see reg. 40(1)(b). Confidentiality issues also arise, but are not protected, in the context of any report prepared on the outcome of the conference: see reg. 46(6). That report is given to both parties, as well as to the CEO: reg.46(8).	The ADR processes under Part 4, Division 4, Subdivision 2 involves relevant qualified third parties being either mediators or other facilitators. Authorised officers are Departmental officers (public servants) appointed by the Minister (regulation 42). Authorised officers have specific but limited roles under the *Petroleum Regulations 2020,* which includes inspections (to assess compliance with an approved access agreement) and conducting conferences in relation to a dispute (regulation 43). These processes are undertaken only at the request of a party to an agreement, and the authorised officer has no powers to compel parties to provide either evidence or information. It is unnecessary to be prescriptive as to the processes or procedures that are to be applied at a conference to be conducted by an authorised officer, and it would be contrary to the nature of a such a conference to do so. The reports provided by the authorised officers include recommendations, are not binding and are to be provided to both parties. Authorised officers will be public servants within the Department that regulate the *Petroleum Act 1984* and the *Petroleum Regulations 2020.* As public servants authorised officers are bound by the Northern Territory Public Sector Code of Conduct including in relation to the use and disclosure of official information. Apart from the requirements of the Code of Practice, there is no expectation of confidentiality on the processes undertaken by the authorised officers under the Regulations, and no specific powers given to authorised officers to compel information it would not be appropriate to impose confidentiality obligations on such authorised officers or exclude such material from being before the Tribunal (if relevant).
Schedule 2, clause 7	Consent/agreement is required for the construction of a fence, gate etc. by the interest holder. For evidential purposes, there is a question of whether any such consent/agreement should be in writing.	The Department agrees that the issue of consent/agreement to fencing would be helpful to be in writing (including for evidential reasons), however that is a matter for the parties to an approved access agreement. The Department would expect that, given the efforts to reach an approved access agreement under the scheme of the *Petroleum Regulations 2020*, that these matters would also be documented.

Regulation	Concern	Response
Schedule 2, clause 14	This provides for the payment of compensation to the owner/occupier by the interest holder, where harm is caused 'to the owner/occupier's land'. It includes an obligation to make good (or to pay compensation to the owner/occupier where it is not reasonably possible to rectify) any harm or damage to 'any water on or under the owner/occupiers land'. Does that include harm to the water table and groundwater that passes/sit below the owner/occupier's land? Acknowledging that I have no expertise in this area, it is imagined that the damage in actual and financial terms could be immense. It is also noted that the provision is not framed as damage to the owner/occupier's interest in the land (that is, their actual loss arising from the damage), but rather more broadly as liability for damage to the land/water. Further, given that compensation is not tied to loss, how is any compensation to be divided between the owner and the occupier where they are not the same person?	The Regulations provide that an access agreement is only required to be reached with either the owner or the occupier (the relevant designated person); not both. The standard minimum provisions are drafted in that context — as being the minimum provisions which may apply to an access agreement which is agreed between the interest holder and the designated person (see regulation 14 and the notes to Schedule 2). The primary purpose of the clause is to place a general obligation on the interest holder to make good any harm or damage to the named features, items and assets (noting specific provisions relating to compensation and repair apply to exclude the operation of this clause). Given the structure of the *Petroleum Regulations* 2020 (and the requirement of the access agreements) it is not appropriate for the Regulations to seek to determine how any compensation that might be paid is to be divided between an owner and any occupier.

Liquor Amendment Regulations No. 2 of 2021

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.31

Hon Natasha Fyles MLA
Minister for Alcohol Policy
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear ~~Minister~~ Natasha,

Re: Liquor Amendment Regulations [No.2 of 2021]

It has come to the Committee's attention that following gazettal of the Liquor Amendment Regulations [No.2 of 2021] on 31 March 2021, they were not then tabled in the Assembly within 3 sitting days.

The Committee notes that section 63(1)(c) of the *Interpretation Act 1978* provides that regulations must 'be laid before the Legislative Assembly within 3 sitting days of that Assembly after the making of the regulations.' Further, section 63(8) of the Act provides that if subordinate legislation is not tabled in accordance with the section 'it is of no effect.'

The Committee understands that the matter has been addressed with the Chief Executive Officer for the Department of the Chief Minister and Cabinet and that the department is working with the Office of the Parliamentary Counsel to rectify this oversight.

Noting the importance of ensuring that subordinate legislation is made in accordance with the *Interpretation Act,* the Committee seeks your advice as to how this matter has been resolved.

Yours sincerely

Mr Joel Bowden MLA
Chair

11 May 2021

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Mr Joel Bowden MLA
Chair
Legal and Constitutional Affairs Committee
GPO Box 3721
DARWIN NT 0801

Via email: LA.Committees@nt.gov.au

Dear Mr Bowden Joel

Thank you for your correspondence dated 11 May 2021, regarding your concerns about the tabling of the *Liquor Amendment Regulations 2021* (No. 2 of 2021).

The Department of the Chief Minister and Cabinet has advised me of this matter, including the operation of section 63(8) of the *Interpretation Act 1978* in relation to these Regulations. The Office of the Parliamentary Counsel (OPC) has republished the electronic reprint of the relevant principal Regulations on the legislation website to reflect that the amendments are not in effect.

The Department of the Chief Minister and Cabinet has been in contact with the Department of Industry, Tourism and Trade (the agency leading this matter) and, in consultation with OPC, is considering the appropriate legislative action required to remedy the oversight.

Yours sincerely

Natasha

NATASHA FYLES

24 MAY 2021

Building Amendment Regulations No. 3 of 2021

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.32

Hon Eva Lawler MLA
Minister for Infrastructure, Planning and Logistics
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear ~~Minister~~ Eva,

Re: Building Amendment Regulations [No.3 of 2021]

It has come to the Committee's attention that following gazettal of the Building Amendment Regulations [No.3 of 2021] on 28 April 2021, they were not then tabled in the Assembly within 3 sitting days

The Committee notes that section 63(1)(c) of the *Interpretation Act 1978* provides that regulations must 'be laid before the Legislative Assembly within 3 sitting days of that Assembly after the making of the regulations.' Further, section 63(8) of the Act, provides that if subordinate legislation is not tabled in accordance with the section 'it is of no effect.'

The Committee understands that the matter has been addressed with the Chief Executive Officer for the Department of the Chief Minister and Cabinet and that the department is working with the Office of the Parliamentary Counsel to rectify this oversight.

Noting the importance of ensuring that subordinate legislation is made in accordance with the *Interpretation Act,* the Committee seeks your advice as to how this matter has been resolved.

Yours sincerely

Mr Joel Bowden MLA
Chair

11 May 2021

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Mr Joel Bowden MLA
Chair
Legal and Constitutional Affairs Committee
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Via email: LA.Committees@nt.gov.au

Dear ~~Mr Bowden~~ Joel

Thank you for your correspondence dated 11 May 2021, regarding your concerns about the tabling of the *Building Amendment Regulations 2021* (No. 3 of 2021).

The Department of the Chief Minister and Cabinet has advised me of this matter, including the operation of section 63(8) of the *Interpretation Act 1978* in relation to these Regulations. The Office of the Parliamentary Counsel (OPC) has republished the electronic reprint of the relevant principal Regulations on the legislation website to reflect that the amendments are not in effect.

The Department of the Chief Minister and Cabinet has been in contact with the Department of Infrastructure, Planning and Logistics (the agency leading this matter) and, in consultation with OPC, the Regulations will be remade.

Yours sincerely

EVA LAWLER

21 MAY 2021

Appendix A: List of Ministerial Correspondence on Subordinate Legislation

No.	Title of Regulation/By-law	Minister	Letter to Minister	Minister's Response
6 of 2020	Environment Protection Regulations	Hon Eva Lawler	11/11/20	21/01/21
18 of 2020	Plant Health Amendment Regulations	Hon Nicole Manison	17/02/21	15/03/21
N/A	Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020	Hon Lauren Moss	17/02/21 23/03/21	12/03/21 20/04/21
31 of 2020	Petroleum Regulations	Hon Nicole Manison	23/03/21	16/04/21
2 of 2021	Liquor Amendment Regulations	Hon Natasha Fyles	11/05/21	24/05/21
3 of 2021	Building Amendment Regulations	Hon Eva Lawler	1105/21	21/05/21

Appendix B: Subordinate Legislation commented on in 14th Assembly

Report	No.	Title of Regulation/By-Law	Minister	Date
Current	3 of 2021	Building Amendment Regulations	Hon Eva Lawler	1105/21
	2 of 2021	Liquor Amendment Regulations	Hon Natasha Fyles	11/05/21
	31 of 2020	Petroleum Regulations	Hon Nicole Manison	23/03/21
	N/A	Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020	Hon Lauren Moss	17/02/21 23/03/21
	18 of 2020	Plant Health Amendment Regulations	Hon Nicole Manison	17/02/21
	6 of 2020	Environment Protection Regulations	Hon Eva Lawler	11/11/20