

**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Ninth Assembly**

**Sessional Committee  
on  
Environment and Sustainable Development**

*The efficacy of establishing an  
Environmental Protection Agency  
in the Northern Territory*

**Volume 2**

**WRITTEN SUBMISSIONS**

**COMMITTEE REPORT NO. 2**

**February 2005**

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Northern Territory  
February 2005



# **TABLE OF CONTENTS**

## **VOLUME 1**

EPA INQUIRY FINAL REPORT, FEBRUARY 2005

## **VOLUME 2**

WRITTEN SUBMISSIONS

(Submissions No. 1 - 33)

## **VOLUME 3**

HANSARD TRANSCRIPTS

(Transcript Nos. 1 - 7)



## Contents

MEMBERS OF THE COMMITTEE.....	vii
SUBMISSION NO. 1 .....	1
MR SEAN ROBERT MEANEY .....	1
SUBMISSION NO. 2 .....	2
SAVE DARWIN HARBOUR GROUP .....	2
SUBMISSION NO. 3 .....	4
LANDCARE COUNCIL OF THE NORTHERN TERRITORY .....	4
SUBMISSION NO. 4 .....	7
CENTRAL LAND COUNCIL.....	7
SUBMISSION NO. 5 .....	10
NORTHERN TERRITORY HORTICULTURAL ASSOCIATION.....	10
SUBMISSION NO. 6 .....	14
BLASTMASTER .....	14
SUBMISSION NO. 7 .....	17
MS MARDIJAH SIMPSON.....	17
SUBMISSION NO. 8 .....	18
NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION.....	18
SUBMISSION NO. 9 .....	20
MR STEVE PETERS.....	20
SUBMISSION NO. 10 .....	21
TENNANT CREEK TOWN COUNCIL .....	21
SUBMISSION NO. 11 .....	22
NORTHERN TERRITORY AUDITOR-GENERAL'S OFFICE .....	22
SUBMISSION NO. 12 .....	26
NHULUNBUY CORPORATION LIMITED .....	26
SUBMISSION NO. 13 .....	27
INDIGENOUS LAND CORPORATION.....	27
SUBMISSION NO. 14 .....	29
KATHERINE HORTICULTURAL ASSOCIATION.....	29

<b>SUBMISSION NO. 15</b> .....	<b>31</b>
ARID LANDS ENVIRONMENT CENTRE INC. ....	31
<b>SUBMISSION NO. 16</b> .....	<b>39</b>
DARWIN CITY COUNCIL .....	39
<b>SUBMISSION NO. 17</b> .....	<b>45</b>
LITCHFIELD SHIRE COUNCIL.....	45
<b>SUBMISSION NO. 18</b> .....	<b>47</b>
DEPARTMENT OF INFRASTRUCTURE, PLANNING AND ENVIRONMENT .....	47
<b>SUBMISSION NO. 19</b> .....	<b>73</b>
MINISTERIAL ADVISORY COMMITTEE ON AQUACULTURE IN THE NT.....	73
<b>SUBMISSION NO. 20</b> .....	<b>74</b>
DEPARTMENT OF HEALTH AND COMMUNITY SERVICES .....	74
<b>SUBMISSION NO. 21</b> .....	<b>77</b>
EcOz ENVIRONMENTAL SERVICES .....	77
<b>SUBMISSION NO. 22</b> .....	<b>83</b>
DARWIN PORT CORPORATION .....	83
<b>SUBMISSION NO. 23</b> .....	<b>85</b>
CHARLES DARWIN UNIVERSITY.....	85
<b>SUBMISSION NO. 24</b> .....	<b>94</b>
OFFICE OF THE INFORMATION COMMISSIONER NORTHERN TERRITORY .....	94
<b>SUBMISSION NO. 25</b> .....	<b>98</b>
POWER WATER.....	98
<b>SUBMISSION NO. 26</b> .....	<b>100</b>
AMATEUR FISHERMEN'S ASSOCIATION OF THE NT INC. ....	100
<b>SUBMISSION NO. 27</b> .....	<b>101</b>
NORTHERN TERRITORY POLICE, FIRE AND EMERGENCY SERVICES.....	101
<b>SUBMISSION NO. 28</b> .....	<b>103</b>
NORTHERN TERRITORY MINERALS COUNCIL (INC.) .....	103
<b>SUBMISSION NO. 29</b> .....	<b>130</b>
CHAMBER OF COMMERCE NORTHERN TERRITORY .....	130

<b>SUBMISSION NO. 30(A)</b> .....	<b>136</b>
ENVIRONMENT CENTRE OF THE NORTHERN TERRITORY, AUSTRALIAN CONSERVATION FOUNDATION, THREATENED SPECIES NETWORK, WORLD WIDE FUND FOR NATURE AUSTRALIA, AUSTRALIAN MARINE CONSERVATION SOCIETY AND ENVIRONMENTAL DEFENDER'S OFFICE (NT) INC .....	136
<b>SUBMISSION NO. 30(B)</b> .....	<b>167</b>
ENVIRONMENTAL DEFENDER'S OFFICE (NT) INC .....	167
<b>SUBMISSION NO. 31</b> .....	<b>169</b>
DEPARTMENT OF BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT .....	169
<b>SUBMISSION NO. 32</b> .....	<b>206</b>
NORTHERN TERRITORY GREENS .....	206
<b>SUBMISSION NO. 33</b> .....	<b>225</b>
KEEP AUSTRALIA BEAUTIFUL COUNCIL (NT) INC .....	225



## **MEMBERS OF THE COMMITTEE**

### **Membership of the Committee:**

Ms Delia Lawrie, MLA (Chair)

Mr T Baldwin, MLA

Mr M Bonson, MLA

Mr S Dunham, MLA

Mr E McAdam, MLA

Mr G Wood, MLA

### **Committee Secretariat:**

Secretary: Mr Graham Gadd

Researcher/ Administrative Assistant: Ms Maria Viegas

Committee Administrative Assistants: Ms Liz M<sup>c</sup>Farlane  
Ms Kim Cowcher



SUBMISSION NO. 1

**MR SEAN ROBERT MEANEY**

Private Citizen

Received 17 February 2004

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18 Tiwi Gardens Road  
TIWI NT 0810

The Secretary  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Pox 3721  
Darwin NT 0801

RE: An Environmental Protection Agency for the Northern Territory?

Further Bureaucracy is unneeded. There needs to be a broadening of WORK, HEALTH AND SAFETY to expand legislation for the prosecution of companies involved in the dumping and discharge of toxic waste. Like most rules, the Government has far too often folded. As with regards to the legislation requiring standards of quality of housing building standards, the requirement of highrise buildings to have underground carparking, and so forth, failure to enforce existing legislation has become a recurring theme.

Sean Robert Meaney

## SUBMISSION NO. 2

**SAVE DARWIN HARBOUR GROUP**

Mr Duncan Dean

*Convenor*

Received 24 February 2004

PO Box 2923  
PalmerstonNT 0831  
duncan.d@bigpond.net.au

23 February 2004

The Secretary  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

Dear Sir/Madam

## ENVIRONMENTAL PROTECTION AGENCY - NORTHERN TERRITORY

I am taking this opportunity to convey to you the resolve of the Save Darwin Harbour Group to have an Environmental Protection Agency legislated into the law of the Northern Territory of Australia.

The Save Darwin Harbour Group is keen to express three main points which the Sessional Committee should understand are not only the views of the SDHG but also the views held, we believe, by many of the people of the Northern Territory.

1. Given the current and prospective rapid economic development in the areas of mining, oil and gas production and processing, transport and communications and agriculture in the Northern Territory, the establishment of a permanent, independent, environmental watchdog is of paramount importance to Territorians.
2. While all other states and territories in Australia, and the majority of democratic states throughout the world, have environmental safeguards assured by the existence of an independent environmental monitoring body, we in the Northern Territory of Australia stand out as an anomaly in our lack of such a body.
3. The future of development projects of all types in the Northern Territory ranging, for example, from inner city building developments, remote agriculture and fisheries projects, oil and gas industry developments and many more varied projects of all sizes planned for the Territory, makes environmental sustainability an issue of great importance.

Without the guarantee of ongoing, social, cultural and particularly environmental monitoring and viability of its new projects, the Northern Territory is setting itself up for

future failure in the eyes of Territorians, the rest of Australia and internationally, as a developmentalist state without concern for an environmentally sustainable future.

In the light of the above, the Save Darwin Harbour Group has resolved to approach your Committee with a request that you recommend to the Legislative Assembly the earliest possible introduction of legislation to provide for an Environmental Protection Authority for the Northern Territory of Australia.

Yours sincerely,

Duncan Dean

## SUBMISSION NO. 3

## LANDCARE COUNCIL OF THE NORTHERN TERRITORY

Mr Jim B Forwood AM

*Chairman*

Received 5 March 2004

**LANDCARE COUNCIL  
OF THE NORTHERN TERRITORY**

CHAIRMAN  
GPO BOX 1547  
DARWIN NT 0801  
PHONE/FAX: (08) 89811 508  
MOBILE: 0408 834 156  
EMAIL: forwood@octa4.net.au

EXECUTIVE OFFICER  
PO BOX 20  
PALMERSTON NT 0831  
TELEPHONE: (08) 8999 4464  
FACSIMILE: (08) 8999 4445  
EMAIL: libby.brown@nt.gov.au

Committee Secretary  
Sessional Committee on Environment and Sustainable Development  
PO Box 3721  
DARWIN NT 0801

Dear Sir/Madam

I am in receipt of a letter from Delia Lawrie, Chairman of the Sessional Committee on Environment and Sustainable Development dated 15 February, 2004 requesting comments and submissions regarding the efficacy of the Northern Territory operating with an Environmental Protection Authority (EPA).

Council members have discussed the Terms of Reference and timeline for submissions. They believe that EPA issues will be very different to the rest of Australia because of the different values, land holdings and activities in the NT.

In response to your letter it should be stressed that this is a very important issue which deserves community input. It is felt that the inquiry process should involve broad community consultation to the extent you should consider lengthening the timeline and widening your requests for submissions to include all Territory natural resource management stakeholders.

I take this opportunity to introduce the Landcare Council of the Northern Territory through the attached brochure, which includes membership and the current Terms of Reference as approved by the Minister Lands and Planning.

Please do not hesitate to call me if you want to discuss the EPA further.

Yours faithfully

J.B. Forwood AM  
Chairman  
4 March 2004

encl.



*Caring for our  
terrestrial  
and marine  
environments*

**LANDCARE  
COUNCIL OF  
THE NORTHERN  
TERRITORY**

PO Box 30  
PALMERSTON NT 0831

Phone: 08 8999 4464  
Fax: 08 8999 4555

Email: Libby.Benson@nt.gov.au

**LANDCARE COUNCIL  
MEMBERS**

- have knowledge of Territory natural resource management issues, priorities, strategies, management plans and funding opportunities.
- are aware of Government and private enterprise directions and priorities which have relevance to effective natural resource management in the Territory.
- have been appointed by the Minister to ensure an adequate balance of representative groups and regional coverage.

**Chairman**

**Jim Farwood**  
Ph: 08 8981 1508  
Email: farwood@ccsa4.net.au

**Members**

**David Ritchie**  
NT Government  
Ph: 08 8969 3662  
Email: david.ritchie@nt.gov.au

**David Alexander**  
Indigenous Land Management, Arid Region  
Ph: 08 8950 5006  
Email: daalexander@icc.org.au

**Peter Cooke**

Indigenous Land Management, Savanna Region  
Ph: 08 8979 0712  
Email: peter.cooke@nt.gov.au

**Colleen O'Malley**  
Conservation of Biodiversity  
Ph: 08 8952 1541  
Email: terrm@ozemail.com.au

**Garry Lambert**  
Local Government  
Ph: 08 8922 3254  
Email: Garry.Lambert@nt.gov.au

**Vacant**  
Non-government Organisations, Arid Region

**Banduk Marika**  
Non-government Organisations, Savanna Region  
Ph: 08 8987 3237  
Email: nuw@odst.net.au

**Patrick O'Leary**  
Coastal & Marine Management, Community  
Ph: 08 8920 5100  
Email: Patrick.O'Leary@nt.gov.au

**Iain Smith**  
Coastal & Marine Management, Industry  
Ph: 08 8981 5194  
Email: iainsmith@nt.gov.au

**Chris Nott**  
Pastoral Land Management, Arid Region  
Ph: 08 8866 9766  
Email: nott@assoa.nt.edu.au

**Georgia Holt**  
Pastoral Land Management, Savanna Region  
Ph: 08 8975 4702  
Email: mairon@bigpond.com.au

**Stuart Kenny**  
Horticulture & Agriculture  
Ph: 08 8981 5976  
Email: ntca.ed@bigpond.com.au

**Faye Lawton**  
Mining Industry  
Ph: 08 8972 0633  
Email: lawton@anglogold.com.au

**Gordon Duff**  
Education  
Ph: 08 8946 6634  
Email: Gordon.Duff@ntu.edu.au

**Jenny Purdie**  
NT Government  
Ph: 08 8982 4495  
Email: jenny.purdie@nt.gov.au

## PURPOSE OF THE COUNCIL

The Landcare Council of the Northern Territory (LCNT) is the peak community and industry body advising the NT Government on natural resource management issues involving the Territory's terrestrial and marine environments.



Volunteer at Tree Planting Day at Ngikiciff, January 2002

The LCNT is an active advocate for natural resource management activities undertaken by community and industry groups, individuals and governments in the Northern Territory, including land, water and biodiversity management and conservation.



Top End Lagoon, Darwin, NT

The LCNT is the regional body for the purposes of implementing Commonwealth Natural Resource Management initiatives such as the extension of the Natural Heritage Trust.

## FUNCTIONS OF THE COUNCIL

The LCNT operates under the following Terms of Reference:

- Use resources made available to LCNT in order to most effectively develop and maintain a strategic analysis of the priority natural resource management issues affecting the Territory;
- Oversee the development of a Northern Territory Integrated Natural Resource Management Plan based on the strategic analysis;
- Represent, support and assist community landcare and other natural resource management initiatives in the Northern Territory;



Yirrkala Community, Clean Up Day

- Promote the understanding and implementation of ecologically sustainable development and the conservation of biodiversity in the terrestrial and marine environments by building capacity within the community;
- Monitor, evaluate and report on the effectiveness of natural resource management in the Northern Territory to

- the extent possible with resources made available to Council;
- Act as the peak assessment body for joint Territory/Commonwealth natural resource management funding programs and provide advice on priorities;
- Communicate and liaise with Governments, peak bodies and community groups including regional natural resource management committees, both locally and nationally, on issues related to natural resource management and conservation;
- Coordinate and encourage community support for landcare and other natural resource management activities including conferences and seminars;
- Provide collaborative strategic leadership for natural resource management amongst all stakeholders;
- Encourage private sector support through sponsorship and involvement in landcare and other relevant natural resource management projects and monitor outcomes;
- Report and provide advice and other services to the Minister for Infrastructure, Planning and Environment as required, including annual reporting.



West MacDonnell Ranges, Alice Springs, NT

## SUBMISSION NO. 4

**CENTRAL LAND COUNCIL**  
Ms Sandy Marty  
*Indigenous Land Management Facilitator*  
Received 8 March 2004



## Central Land Council

33 Stuart Highway  
Alice Springs  
Northern Territory

P.O. Box 3321  
Alice Springs  
N.T. 0871

4th March, 2004

Delia Lawrie, MLA  
Chairperson  
Sessional Committee on Environment &  
Sustainable Development  
GPO Box 3721  
DARWIN NT 0801

Dear Delia,

**Re: Environmental Protection Authority – NT**

Thank you for your letter inviting comment on the Terms of Reference for the establishment of an Environmental Protection Agency in the Northern Territory.

With reference to Terms of Reference (a):

I fully support the establishment of an Environmental Protection Agency for the Northern Territory. The Northern Territory is the only place in Australia without legislation protecting the environment from impacts caused by development, pollution and poor environmental practices. Environmental protection legislation also has the potential to play a significant role in promoting sustainable development in the Northern Territory.

The Northern Territory, on an international level, should have legislation in place for protection of the environment as Australia is a signatory to the 1992 Earth Summit to prevent environmental degradation and to the Basel Convention for the safe disposal of hazardous wastes.

Protection of the environment from construction, dangerous and hazardous waste products and its effects on people and the environment has often been overlooked on numerous occasions in the Territory. Incidents that spring to my mind over the past two years are:

- Tanami cyanide spills – cyanide was emptied from a truck along the Tanami Highway from the Granite Mines. Toxic liquid had killed birds and other animals that had taken a drink from the contaminated water and was of major concern to the locals. The spill had not been

- reported and was later found to have been off-loaded by a truck driver. There have been no prosecutions or legal action taken with respect to this spillage. Granite Mines removed and tested the soil, but this does not prevent this incident happening somewhere else again, perhaps in circumstances less likely to attract attention. Environmental protection legislation would ensure mining companies would be responsible for residuals deposited either at site or through transportation and then safe/legal disposal. As well, because vast stretches of land in the Northern Territory are Aboriginal freehold land, consultation and comment must occur with Aboriginal landowners. Mining activity often occurs in remote areas where the majority of the population is Aboriginal. It is important that environmental protection should encompass these remote areas as well as major population centres. Just recently, another spill of hydrochloric acid occurred on the same stretch of road.
- Gouldian Finch population – Adrail, the company that built the Alice Springs to Darwin Railway line, were advised of a Gouldian Finch population along the railway route. However, the area was bulldozed by contractors working on the line. There were 11 identified feeding sites for the Gouldian Finch with four of these sites bulldozed by Adrail workers. Legislation for environmental protection could have protected these sites. Regulations with severe penalties would require contractors and companies to adhere to legislation. Again, this was a reported incident that gained media attention, with calls to put in place appropriate environmental protection legislation.

Comments on Terms of Reference (b):

Options for the structure of an environmental agency should provide for Environmental Protection officers placed in the four major centres of the Northern Territory – Darwin, Katherine, Tennant Creek and Alice Springs with the Department of Infrastructure, Planning & Environment. Positions should be advertised with this existing agency to handle consultation with major developers, town planners, mining companies, Aboriginal corporations, councils and businesses on environmental impacts. This position could evaluate environmental impact assessments, monitor and support sustainable development and ensure compliance with legislation.

With reference to Terms of Reference (c):

The South Australian *Environment Protection Act 1993* is a good model for environmental protection legislation in the Northern Territory.

One example in South Australia of positive, proactive environmental protection is their legislation for recycling containers since 1975, which has been highly successful.

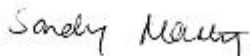
It is the only State/Territory in Australia to do so, and provides the community financial incentives for recycling. The Northern Territory has started looking into container deposit legislation and this should be included in any new environmental protection legislation for the future.

Options for the staged introduction of this legislation in the Northern Territory should be open for discussion by all stakeholders setting out priorities and goals for environmental protection. This should include comment from stakeholders on:

- Pollution control
- Waste minimization
- Hazardous goods disposal
- Noise control
- Protection of native fauna & flora
- Aboriginal heritage
- Environmental & community health
- Sustainable development

Environmental protection legislation should be introduced into the Territory and included in any development planning for industry, business, tourism, heritage and housing. An environmental protection agency would assist planners/developers with policies, comments and changes in completing their environmental impact statements on ecologically sustainable development within the Territory.

Yours sincerely,



Sandy Marty  
Indigenous Land Management Facilitator  
Land Management  
Central Land Council

## SUBMISSION NO. 5

**NORTHERN TERRITORY HORTICULTURAL ASSOCIATION**

Mr Tom Harris  
*President*

Received 16 March 2004 and 9 June 2004



**To: Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory**

**INQUIRY INTO ESTABLISHING  
AN ENVIRONMENTAL PROTECTION AGENCY  
FOR THE NORTHERN TERRITORY**

The Northern Territory Horticultural Association is the peak representative body for horticulture industry groups in the Northern Territory. The NTHA council comprises two representatives from each horticulture commodity group.

On Monday the 8<sup>th</sup> of March 2004 the NTHA council unanimously agreed to oppose the establishment of an Environmental Protection Agency for the Northern Territory. As part of fresh food management, an increasing number of Northern Territory Growers currently undertake audited programs that mandate environmentally sustainable farming practices.

It is the general consensus amongst members that departments and /or agencies responsible for environmental protection and sustainable development already exist.

These include but are not limited to:

1. Department of Environment and Heritage (existing government department) whose primary role is to:
  - Work to protect the environment through environmental research and monitoring, environmental supervision, audit and inspection.
  - Protect and advises the Australian Government on policies and programs for the protection and conservation of the environment.
  - Works with Australian business organizations and industrial sectors, the community and other levels of government to protect and improve the environmental performance of these parties.
  - Administers environmental laws including the Environment Protection and Biodiversity Conservation Act and a range of other acts.
  - Is responsible for Australia's participation in a number of international environmental agreements.
  
2. Department of Infrastructure, Planning and Environment – Environment Protection Services (existing government department) whose role is to :
  - Assist the government effectively achieves its commitment to encourage and promote environmentally sound development throughout the Northern Territory.
  - Undertake assessments under the Environmental Assessment Act of public and private sector development proposals.
  - Provide advice to decision-makers on the safeguards and controls which are necessary to protect the environment.
  - Develop and implement Government policies and legislation for managing wastes which are hazardous to the environment;

- Operate a 24-hour community Pollution Response Line;
- Develop environmental guidelines, codes of practice and technical support and education programs in consultation with industry, other government agencies, local government bodies and non government organizations.
- Develop regional waste management plans and strategies in consultation with local government bodies.
- Advise developers on environmental best practice and cleaner production mechanisms for minimizing environmental impact.
- Co-ordinate environmental monitoring programs for major Government development projects;
- Provide information to assist community awareness and understanding of the Government's environmental protection strategies;
- Provide advice and assistance on oil spill contingency planning and developing guidelines for the prevention of coastal and marine pollution.
- Co-ordinate input on national and international environmental issues through two Ministerial councils.
- Participate in national waste forums, e.g. providing input on national and international chemical usage and hazardous waste trade issues through Environment Australia.

The DIPE Environment Services administers the Environmental Assessment Act, the National Environment Protection Council (NT) Act, the Ozone Protection Act, the Environmental Offences and Penalties Act and the Waste Management and Pollution Control Act.

3. The Environment Centre Northern Territory (existing peak environment group partially funded by government) whose primary role is:

- To achieve environmental protection and management throughout the Territory.
- promote environmental awareness;
- involve the public in conservation work;
- provide information via our library and files;
- lobby government and industry;
- inform media on environmental issues;
- assist other groups to protect the environment;
- liaise with other conservationists, both nationally and internationally;
- publish a regular and informative newsletter;
- support the recognition of Aboriginal land and rights

The NTHA submits that if the government perceives there is need for an Environmental Protection Agency then the focus should be on improving, strengthening and empowering the existing departments currently responsible for environmental protection and ensuring these departments are adequately resourced to achieve the desired outcomes.

The NTHA believes that a partnership approach to addressing environmental issues and better communication between the various departments and stakeholders would be more beneficial than introducing another level of bureaucracy.

We thank you for giving us the opportunity to submit comments and contribute to this inquiry.

Kind Regards

Tom Harris  
President  
Northern Territory Horticultural Association  
9 June 2004

## SUBMISSION NO. 6

**BLASTMASTER**

Mr Les Avory

*On Behalf of*

Received 17 March 2004

3 Bruce Avenue  
MARLESTON SA 5033

17 March 2004

Mr Graham Gadd  
Secretary  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

Dear Mr Gadd,

On behalf of BLASTMASTER, I submit our argument for the establishment of an EPA for the Northern Territory.

We respectfully request we be advised should our comments be incorrectly formatted.

Regards,

L Avory

**SUBMISSION**

APPEARANCE : Only if required by the Committee

MY ORGANISATION BLASTMASTER is a major Company supplying Tools and associated consumables to the Surface Preparation, Cleaning & Painting Industry. In the main, these Company's operate mainly within the Civil, Oil & Mining sectors.

ADDITIONAL SUPPORT None

## ARGUMENT SUBMITTED:

## 1. SUBMISSION OBJECTIVE:

The purpose of our submission is to raise the NT Government's awareness to how Industrial waste generated by conglomerates working within Civil, Mining & Oil sectors should be formally and responsibly managed by the NT Government via an Environment Protection Agency.

It is envisaged that an EPA together with OH&S departments within development minded conglomerates, will be able to agree and cost out practical working protocols in advance of in-situ operations, preventing potential expensive litigation downstream. eg Oktedi.

The introduction of an EPA, more importantly, a policing department within it, will in our opinion, greatly assist the physical protection of the Northern Territory as it embraces the benefits created by companies interested in development within it.

## 2. OUR CONCERN

By nature of our supply role throughout Australia, we are occasionally requested by Contractors and Environmental Consultants to assist in disposal methods, indicating that no Government compliance or reporting procedure (protocols) have been initiated or are indeed, in place.

Our business is dominated by the requirements of Industrial Plant Maintenance. The great majority of existing Industrial Operations throughout Australia from Pulp & Paper manufacture to Abattoirs, are 25 – 50 years in age.

It is not unreasonable for us to suggest that in recent times, as the demand for performance and profit grows, Maintenance Programs and Budgets in Industry in general are postponed and cut often to support 'bottom line' profits.

Unless regular checks are made, especially where dangerous process is taking place, danger to Workers and the Environment exists. eg Altona.

In the process of preparing existing and new steelwork significant hazardous waste may be generated. Blasting media waste such as Garnet ore, can be contaminated with Toxic heavy metals such as, Lead (Paint primers) Chromium, Cadmium, Arsenic (sheep & cattle dips) Mercury (munitions) Copper, Zinc, Cadmium, Uranium. Many of these and other more exotic are used in Mining process, or are derivative from it.

## 3. AN EFFECTIVE EPA

Most State EPA's are reactive agencies, that respond to the chance report of an offensive incident.

It is our experience that unless an EPA has a facility within it, that is known by all Industries operating within the NT, to have significant inspection, detection and authoritative powers, rather than a limp Agency that acts only AFTER offence to the Environment has taken place, it will be considered ineffective, and not taken seriously.

## 4. RECOMMENDATIONS TO CONSIDER

It is our recommendation that any NT EPA should consider having ;

- a. strategies that make it effective.
- b. effective authority, insulated and free of political interference.
- c. field officers expert in Industrial processes & emergency clean-up

- d. Coastal Inspection expertise
- e. strategically positioned regionalised Offices.
- f. Indigenous representation.
- g. Legal advisers expert in Insurance, Land & Environmental Law
- h. Trainee / teaching facility

We trust our submission is of assistance to the Committee.

Yours faithfully,

Les Avory  
for BLASTMASTER

## SUBMISSION NO. 7

**MS MARDIJAH SIMPSON***Private Citizen*

Received 18 March 2004

Mardijah Simpson, P.O.Box 4213, Alice Springs, NT 0871  
89533581 mobile 0413634603 e-mail <mardijah@greenbeetle.org>

The Secretary,  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of The Northern Territory Government  
GPO Box 3721, DARWIN NT 0801

March 4th, 2004

Dear Sir,

In response to your advertisement in the newspaper I wish to contribute to the "Inquiry: An Environmental Protection Agency for the Northern Territory?"

As a member of the general public with a deep interest in and concern for the environment; local, regional, national and global, I believe it is essential that the Northern Territory has an Environmental Protection Agency.

(I am surprised that this does not exist already. In 1997 I worked with a solicitor who I understood was the Environmental Protector, based in Darwin, when I was with Tangentyere Council, on issues impacting on the local environment.)

The diversity and complexity of issues relating to and impacting on the environment requires immediate, serious, informed, professional attention and action.

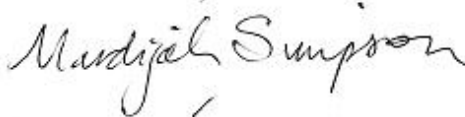
Specific environmental issues for Central Australia would include water use and re-use, salinity, fire risk, land degradation, buffle grass, waste disposal and recycling, feral animal control and conservation of indigenous animals, birds, reptiles and other wildlife.

An Environmental Protection Agency for the Northern Territory should be structured and operate to ensure adequate resources and accessible professional expertise is available in Central Australia. This is needed to serve, inform, advise and advocate for the Central Australian community with special attention paid to working closely with the traditional owners of this country.

I would be interested to know more of the various EPA models functioning well elsewhere. I hope there will be more information available on this at your website ([www.nt.gov.au/lant](http://www.nt.gov.au/lant)) and also at the public forum which I am advised will take place in Alice Springs in April.

Yours sincerely

Mardijah Simpson



## SUBMISSION NO. 8

## NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION

Mr John Armstrong

*President*

Received 22 March 2004

**NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION INC.**

Member - National Farmers' Federation &amp; Cattle Council of Australia

Secretariat  
 Suite # 9, 1<sup>st</sup> Floor, Raffles Plaza  
 1 Buffalo Cr. Darwin NT 0800  
 GPO Box 4845  
 DARWIN NT 0801  
 Tel: (08) 89 815 976  
 Fax: (08) 89 819 527  
 E-mail: ntca@bigpond.com

Alice Springs Branch  
 54 Hartley Street  
 Alice Springs NT 0870  
 PO Box 2288  
 ALICE SPRINGS NT 0871  
 Tel: (08) 8962 5122  
 Fax: (08) 8963 4260  
 E-mail: ntcaesp@bigpond.com

Thursday, 18 March 2004

The Committee Secretary  
 The Sessional Committee on Environment & Sustainable Development  
 PO BOX 3721  
 DARWIN NT 0801

Dear Madam Chair,

**RE: Submission on the proposed EPA**

I would like to take this opportunity to formally submit the Northern Territory Cattlemen's Association (NTCA) considerations on the proposed establishment of a NT Environmental Protection Agency.

The Northern Territory Cattlemen's Association Inc is the peak primary industry lobby group in the Northern Territory (NT). The NTCA represent over 92% of the NT cattle herd from small family operations to the large corporate organisations.

Our members manage a landmass in excess of 620,000 square kilometres; we produce 450,000 high quality cattle per year. Over 240,000 head are delivered directly to the Port of Darwin for export to the Asia Pacific Region and a further 210,000 head are transported and sold to all states and Territories of Australia. The NT pastoral industry generates \$300 million directly and over \$880 million indirectly into the NT economy.

The NTCA strongly apposes the establishment of any new body or Environmental Protection Authority that may inhibit development and future investment in the NT. There is already a disturbing trend of investors concerned with the NT Governments lack of vision for development in the NT.

## Concerning questions:

1. Who will manage the Authority?
2. Who will the body report too?
3. Who will fund the operation?
4. What core business activity will be conducted?
5. What input would economic industry drivers bodies have in the Authority?

**'Advancing and protecting the interests of the cattle producers in the Northern Territory'**

The NTCA currently supports the arrangement in place, and managed by the Department of Infrastructure, Planning and Environment's 'Office Environment and Heritage (OE&H)'.

The Primary Industry sector (cattle industry) is in a mode of expansion with Land and Water being a major topic at present. NTCA believe that the OE&H provides adequate environment protection for the any future primary industry development in the NT.

The OE&H, has over time, proven to be adequately managed, but under resourced, it may be appropriate to review the OE&H in regards to staffing and resource matters with out resorting to a completely new body.

Please don't hesitate to contact our Executive Director Mr. Stuart Kenny in Darwin on the above numbers for any further information on the NT cattle industry.

Yours Sincerely,



**JOHN ARMSTRONG**  
PRESIDENT  
NT Cattlemen's Association Inc

**'Advancing and protecting the interests of the cattle producers in the Northern Territory'**

SUBMISSION NO. 9

**MR STEVE PETERS**  
*Private Citizen*  
Received 23 March 2004

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steve@greenbeetle.org

23 March 2004

The Secretary  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

Dear Sir/Madam

THE NEED FOR AN ENVIRONMENTAL PROTECTION AGENCY IN THE  
NORTHERN TERRITORY

I am forwarding this e-mail by way of an expression of interest in your recent call for public submissions regarding the need for an Environmental Protection Authority in the NT.

I think the NT could benefit greatly from an EPA. Our Government's timely proposal could put the NT in step with other states. We can still intervene in time to safely preserve enormous expanses of pastoral land and world-heritage bushland.

At a time when such natural environments are growing increasingly rare elsewhere in the world, our responsible management of resources would be rewarded by steady growth of tourism.

Regards,

Steve Peters

## SUBMISSION NO. 10

**TENNANT CREEK TOWN COUNCIL**

Mr Dave Wormald  
Chief Executive Officer  
Received 26 March 2004



## The Tennant Creek Town Council

PEKO ROAD, TENNANT CREEK, NORTHERN TERRITORY 0860

Please address all correspondence to:  
CHIEF EXECUTIVE OFFICER  
PO BOX 821  
TENNANT CREEK, NT 0861

Telephone: (08) 8962 0000  
Facsimile: (08) 8962 0077  
Email: council@tcc.nth.gov.au  
Website: www.tennantcouncil.nt.gov.au

Your Ref:  
Our Ref: 3001

Committee Secretary  
Legislative Assembly of the NT  
Sessional Committee on Environment  
and Sustainable Development  
GPO Box 3721  
Darwin NT 0801

Dear Sir/Madam,

**RE: ENVIRONMENTAL PROTECTION AGENCY INQUIRY**

I refer to Ms Delia Lawrie's letter of 15<sup>th</sup> February 2004 regarding the above.

This matter was considered by Council at our 23<sup>rd</sup> March 2004 meeting.

It was decided to advise your Committee that this Council –

- supports the establishment of an adequate Environmental Protection Agency for the Northern Territory;
- does not have sufficient resources at this time to adequately research the proposal in order to be able to make a detailed meaningful submission;
- will be prepared to comment on any options paper on structures and models which the Committee may prepare; and
- will take part in any public inquiry that the Committee may decide to conduct in Tennant Creek.

Yours sincerely,

**DAVE WORMALD**  
CHIEF EXECUTIVE OFFICER

24<sup>th</sup> March 2004

File: Document1

SERVING THE COMMUNITY  
Public Library, Peko Road  
Swimming Pool, Peko Road  
Civic Hall, Peko Road  
Access Centre & Chambers, Peko Road  
Municipal Depot, Maloney Street

## SUBMISSION NO. 11

**NORTHERN TERRITORY AUDITOR-GENERAL'S OFFICE**  
Mr Mike Blake  
*Auditor-General for the Northern Territory*  
Received 26 March 2004

**Northern Territory Auditor-General's Office**

Level 12, Northern Territory House  
22 Mitchell Street  
Darwin NT 0800

GPO Box 4594  
Darwin NT 0801  
Australia

Telephone: 08 8999 7155  
Facsimile: 08 8999 7144  
<http://www.nt.gov.au/ago>  
e-mail: [nt.audit@nt.gov.au](mailto:nt.audit@nt.gov.au)

The Hon Delia Lawrie, MLA  
Chair, Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

23 March 2004

Dear Ms Lawrie

**Efficacy of the Northern Territory operating an Environmental Protection Agency**

Thank you for your letter dated 15 February 2004 in which you seek comments and submissions regarding the above. I appreciate being given the opportunity to comment.

Your letter notes that the Sessional Committee on Environment and Sustainable Development (the Committee) invites comments and submissions inclusive of but not restrictive to:

- (a) arguments for and against the establishment of an Environmental Protection Agency for the Northern Territory;
- (b) options for the structure of an Environment Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory; and
- (c) if a particular model is recommended, options for its staged introduction.

I do not consider that I am sufficiently qualified in environmental related matters to provide effective comment on any of the above three matters. My comments below are, therefore, focussed on issues that I believe the Committee should bear in mind when evaluating submissions it receives. These include:

- ◆ The Committee needs to develop clear deliverables and outcomes for such an Agency, which must be measurable both in the short and long term. In this regard I attach a copy of a paper presented to the Australasian Council of Public Accounts Committees in February 2003 which details the names of various agencies that have initiated suggestions for triple bottom line reporting including environmental related matters;
- ◆ The need for clarity between the often conflicting interests of environmental sustainability and economic development. This is particularly relevant where one agency may play dual roles as occurred in another State where a single agency had responsibility for managing old growth forests and for running a wood chipping industry. Perhaps in the Northern Territory this could involve striking a balance between tourism and managing the environment;
- ◆ The need for clarity in levels of authority and compliance with guidelines (or other authoritative documents) issued by any new environmental agency;

- ◆ The need to recognise the unique features of the Northern Territory environment and the associated risks;
- ◆ The need to carefully consider reporting arrangements to be imposed on agencies and companies operating in the Northern Territory; and
- ◆ The need to consider and assess successes achieved elsewhere in Australia by similar environmental agencies.

Should you wish to discuss this submission further please contact me on 8999 7004.

Yours sincerely,

*Mike Blake*

Mike Blake  
Auditor-General for the Northern Territory

The Hon Delia Lawrie, MLA  
Chair, Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

23 March 2004

Dear Ms Lawrie

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- (b) options for the structure of an Environment Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory; and
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- ◆ The need for clarity between the often conflicting interests of environmental sustainability and economic development. This is particularly relevant where one agency may play dual roles as occurred in another State where a single agency had responsibility for managing old growth forests and for running a wood chipping industry. Perhaps in the Northern Territory this could involve striking a balance between tourism and managing the environment;
- ◆ The need for clarity in levels of authority and compliance with guidelines (or other authoritative documents) issued by any new environmental agency;
- ◆ The need to recognise the unique features of the Northern Territory environment and the associated risks;
- ◆ The need to carefully consider reporting arrangements to be imposed on agencies and companies operating in the Northern Territory; and

- ◆ The need to consider and assess successes achieved elsewhere in Australia by similar environmental agencies.

Should you wish to discuss this submission further please contact me on 8999 7004.

Yours sincerely,

Mike Blake  
Auditor-General for the Northern Territory

SUBMISSION NO. 12

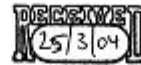
**NHULUNBUY CORPORATION LIMITED**

Mr Mike Hindle  
*Town Administrator*  
Received 30 March 2004



**Nhulunbuy  
Corporation  
Limited**  
ABN 57 009 596 598

PO Box 345  
Nhulunbuy NT 0881  
Phone: (08) 8987 1933  
Fax: (08) 8987 2451  
Email: nhulcorp@bigpond.com.au



REF:MH:SMc:L7965

22 March 2004

Legislative Assembly of the Northern Territory  
P O Box 3721  
DARWIN NT 0801

Dear Delia Lawrie, MLA

**RE: Sessional Committee on Environment and Sustainable Development**

I refer to your letter dated 18<sup>th</sup> February 2004 seeking comments and submissions relating to the Terms of Reference of the inquiry into the above subject by the Sessional Committee on Environment and Sustainable Development.

In general my only comment is that I do not believe that the northern Territory needs to set up another beurocratic structure as an individual Environmental Protection Agency.

I believe the Office of Environment and Heritage do more than an adequate job in these matters and if necessary this office could be slightly expanded if more environmental matters required consideration.

Yours sincerely  
NHULUNBUY CORPORATION LIMITED

M. Hindle  
TOWN ADMINISTRATOR

## SUBMISSION NO. 13

**INDIGENOUS LAND CORPORATION**

Mr David Galvin  
*General Manager*  
Received 31 March 2004

PO Box 586  
CURTIN ACT 2605

31 March 2003

Mr Graham Gadd  
Committee Secretary  
Sessional Committee on Environment and Sustainable Development  
PO Box 3721  
Darwin NT 0801

Dear Mr Gadd,

**Inquiry on establishing an Environmental Protection Authority (EPA) in the Northern Territory**

Thank you for the opportunity to make comment on the inquiry into the establishment of an Environmental Protection Authority (EPA).

The ILC is a Commonwealth statutory authority established in June 1995 under the *Aboriginal and Torres Strait Islander Act 1989* (ATSIC Act). The functions of the ILC are to acquire land for Indigenous people and assist Indigenous people to manage Indigenous held land so as to provide cultural, social, environmental or economic benefits. The ILC's legislative responsibilities with respect to land management activities are those that consist of or relate to the managed use, care or improvement of land (s.191E(5), ATSIC Act).

The key functions of an EPA with implications for Indigenous people include:

- 1) assessment of environmental impact statements for development proposed on or adjacent to Indigenous held land – particularly social impact as a component of EIA;
- 2) undertaking investigation, prosecution and enforcement in relation to incidents that breach conditions of approvals and/or relevant legislation that are affecting Indigenous held land (directly or indirectly);
- 3) development of independent policy advice to the Minister for Environment and Heritage.

As Indigenous people constitute approximately 25% of the NT population and are significant landholders with approximately 50% of the Territory under Indigenous control, the EPA must develop effective strategies to engage this key stakeholder group.

The NT Government has an opportunity unavailable to any other jurisdiction, to develop, establish and operate an EPA that integrates and addresses Indigenous peoples needs and knowledge, as well as facilitating their active involvement in an EPA.

The ILC encourages the EPA to undertake continuing education programs for the general community with a particular focus on the Indigenous community. Such education programs are important for:

- improving understanding of the operations and functions of the EPA;
- building support for the EPA which can improve investigation and enforcement activities eg. including the community in a “watchdog” role, improving quality and relevance of major project Environmental Impact Assessments (EIA) through stakeholder contribution to and participation in the EIA process.

Finally, it is imperative that any EPA, whatever its configuration and objectives, must be appropriately resourced. Typically EPA’s in other jurisdictions undertake significant investigation, enforcement and prosecution activities that require substantial resourcing. The ILC encourages the NT Government to ensure that appropriate levels of resources are available for the establishment and operation of an EPA.

The success of an EPA in the NT will rely on its ability to:

- address Indigenous community perspectives and concerns;
- effectively engender support throughout the community via education programs;
- access adequate resources.

Should you have any enquiries regarding this submission please do not hesitate to contact Paul Jenkins (Manager, Policy & Research) on 08 8216 4121 or at paul.jenkins@ilc.gov.au.

Yours sincerely,

**(e-signed)**

DAVID GALVIN  
General Manager  
Indigenous Land Corporation

## SUBMISSION NO. 14

**KATHERINE HORTICULTURAL ASSOCIATION**

Mr David Higgins

*President*

Received 1 April 2004

PO BOX 2027  
KATHERINE NT 0851

19 March 2004

The Secretary  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
Darwin NT 0801

An Environmental Protection Agency For The Northern Territory

Dear Sir,

The Katherine Horticultural Association (KHA) is a newly incorporated body representing a wide variety of horticulturalists in the Katherine area.

The Katherine area is already a substantial contributor to horticultural production within the Northern Territory. There exists significant potential for a further lift in production given appropriate infrastructure and the creation of an encouraging investment climate.

On the 10<sup>th</sup> of March 2004 the committee of the KHA identified a number of concerns regarding the formation of an Environmental Protection Agency within the Northern Territory. These centre around the additional expense which appears unavoidable with the establishment of another regulatory body. There is a strong feeling that appropriate laws and regulations already exist and that these should be implemented by competent, well resourced and unbiased staff of the relevant government department.

It is considered that any shortfalls in the existing legislative structure should be rectified in the normal manner.

Members were of the view that establishment of a separate and effective Environmental Protection Agency would require substantial resources. It was felt that these would be more effectively used within the existing structure of government in areas relating to environmental protection and the sustainable use of natural resources.

Further it was noted that horticultural producers are increasingly facing a situation where marketability of products is linked to acceptable environmental practices. Market forces as a mechanism for adopting appropriate and sustainable production practices are more effective and at no cost to government. Producers not conforming to increasingly stringent market standards will be ineligible to deliver to specific markets. Such a

production and marketing environment will force producers to conform to environmentally sound production systems.

It is appreciated that the notion of establishment of an independent EPA, as might be found elsewhere, may be attractive. However it is considered that such an agency may by its very independence from government, become hostage to special interest groups and beyond control of the government and the electorate.

The KHA also has particular concern as to the level of protection to be sought by a newly established Environmental Protection Agency, the detail of its charter and the bases on which it will interpret data and subsequently take action. From a horticultural perspective, complete protection implies no further development of "new" land. This will substantially reduce the scope for economic growth in those sectors which require a land base. Such a scenario will unavoidably restrict income generation and thereby reduce the capacity of the Northern Territory to independently resource local issues, whether these relate to service delivery or infrastructure.

The KHA is keen to work towards a situation where those uses of all environmental resources are truly sustainable. Maintenance of the character of the Northern Territory and further development of the economy demand this. There is however a grave concern that establishing an Environmental Protection Agency will siphon valuable resources away from existing agencies. This will itself create aggravation and disincentive and be a direct expense to government and to producers.

The KHA looks forward to open discussion with the various arms of government and other interested parties to achieve a reasoned conclusion to environmental issues.

Thank you for the opportunity to submit to this inquiry.

David Higgins  
President

## SUBMISSION NO. 15

**ARID LANDS ENVIRONMENT CENTRE INC.**

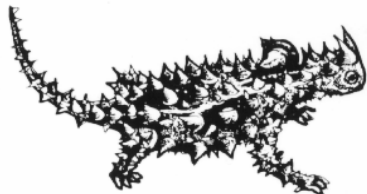
Ms Sonia Bazzacco and Mr Glen Marshall

*ALEC Management Committee Member and Co-ordinator (respectively)*

Received 1 April 2004 and 3 June 2004 (respectively)

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## Arid Lands Environment Centre, Inc.



Office	39 Hartley St (Old Hartley St School)
Mail	PO Box 2796 Alice Springs NT 0871 Australia
Phone	+61 (08) 8952 2497
Fax	+61 (08) 8953 2988
E-mail	aridlec@ozemail.com.au
ABN	50 100 640 918

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Committee Secretary  
Sessional Committee on Environment and Sustainable Development  
PO Box 3721  
Darwin NT 0801  
graham.gadd@nt.gov.au

30 March 2004

*Inquiry into an Environment Protection Authority for the NT*

Dear Sir/Madam,

The Arid Lands Environment Centre (ALEC) is strongly in favour of an Environment Protection Authority for the NT.

The NT is currently on the cusp of a major development phase in its history, particularly in the Top End. NT Governments, whether Labour or CLP, are going to continue championing major projects such as onshore gas and the Daly Basin. The potential environmental impacts of such projects are obviously going to be significant, and it is therefore good governance to set up an independent EPA that is at arms length to government.

In central Australia, we have seen two chemical spills on the Tanami road in recent years, with the first poorly investigated by WorkSafe. An EPA would presumably be more focused and would do a better job.

We are also seeing the biodiversity of central Australia suffering under a 'death-by-a-thousand-cuts' from the spread of Buffel Grass and other weeds, uncontrolled fires, feral animals and piecemeal landclearing on pastoral properties.

At present, there is only one position within the NT government dedicated to the policing of environmental laws in central Australia. This position has far too big a work load to ensure that the government responsibly protects land, soil and water through environmental laws. The Arid Lands Environment Centre would like to see numerous positions take on this role through the establishment of an EPA in central Australia.

If the government is to get serious about policing its environmental laws, a review of all laws protecting soil, water, vegetation and land needs to occur. An example of the government's unwillingness to police its current laws is the practice of administering vegetation clearing applications after a breach of the clearing guidelines has occurred. This has created a precedent that encourages land holders to ignore current environmental acts. We believe that the creation of an EPA, in conjunction with strong legislative backing, is imperative for the effective protection of the NT's natural environment.

We apologise for the brevity of this submission, as our organisation is currently between Coordinators.

Yours sincerely,

Sonia Bazzacco  
ALEC Management Committee member

**Submission Presented at the Alice Springs Public Hearing**

'Inquiry into the efficacy of an Environmental Protection Agency for the Northern Territory'

By Glen Marshall

*3 June 2004*

The Arid Lands Environment Centre (ALEC) is thankful for the opportunity to make this submission to the public hearing on an EPA for the Northern Territory with terms of reference to examine:

- a) arguments for and against the establishment of an Environmental Protection Agency for the Northern Territory;
- b) options for the structure of an Environmental Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory; and
- c) if a particular model is recommended, options for its staged introduction.

**SUMMARY**

ALEC believes a best-practice, independent, statutorily constituted EPA is required in the Northern Territory to protect and enhance our unique environment for future generations.

This is particularly important as the NT juggles its expanding nature-based tourism industry<sup>1</sup> and diverse ecosystems with an unprecedented phase of industry, resource & horticulture development. In central Australia, the emergence of Desert Knowledge as a 'knowledge economy' driver demands an innovative best practice approach to environmental protection.

Without rigorous and transparent environmental protection policies, planning, assessments, monitoring, enforcement and education, there is an increased likelihood of short- to long-term environmental management problems such as those crippling the Murray-Darling Basin or prohibiting the rehabilitation of Mt Todd Mine, whilst in central Australia there is an ongoing slow decline in the region's unique biodiversity due to the lack of regionally coordinated management tools.

The vast economic cost of poor environmental management resulting in lost production, reduced tourism revenue and costly rehabilitation works is clearly known from other states, and is adequate justification for resourcing a 'Rolls Royce model' EPA.

An EPA should have a broad focus to encompass not only the traditional regulation of environmentally related Acts, but also a broad spectrum of initiatives that allow the EPA to deliver world's best-practice outcomes for environmental protection and enhancement.

As an overriding principle, an EPA should represent the interests of the NT's unique environment, not that of governments, businesses, interest groups or individuals.

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<sup>1</sup> For example, the latest international/domestic tourist TV ads that include Ritchie Benaud's 'marvellous' ad feature a high proportion of NT sites.

## Why have an EPA?

We believe there are inadequacies in the current NT environmental protection arrangements, including:

- *Ministers are not obliged to provide (written) justification for ignoring environmental considerations before issuing approvals for developments.*

This seems particularly relevant because Ministers make decisions under the influence of developers, Ministerial colleagues and others, and generally have only limited environmental knowledge on which to base their decisions. As an example, the Mercorelia Court subdivision in Alice Springs in the mid-1 990's was granted Ministerial approval despite a Development Consent Authority recommendation against it. One of the issues of concern was the likely impact of salt on building foundations due to its location in the middle of Coolibah Swamp". Despite measures being put in place to mitigate this issue, significant concerns still remain that salt will impact on buildings, potentially exposing the government to expensive litigation. If a statutory EPA had been in place, then the Minister would have been obliged to provide transparent reasons why such a significant environmental issue was over-ridden, prior to his (currently non-appealable) decision to proceed.

The lack of rehabilitation funds for Mt Todd mine is another example of poorly planned decisions leaving significant environmental and economic costs for taxpayers and the community. A best-practice statutory EPA would have recommended mandatory rehabilitation bonds to be lodged before the project commenced, the responsible Minister would be obliged to act in accordance with these recommendations unless written, publicly available reasons are given for variations, and compliance would be monitored by the EPA.

- *The Minister for Environment & Heritage has (full) control over the constitution and role of the Environment and Heritage Division of DIPE<sup>2</sup>, with limited checks and balances on that power.*

This means the Minister can change the OEH constitution without any parliamentary or public scrutiny. It also leaves OEH vulnerable to inappropriate directions by the Minister on particular issues. Therefore OEH is far from an 'independent watchdog' on environmental issues, eroding public faith in its role.

In its favour, the creation of a separate Ministry for Environment & Heritage overseeing OEH has removed the obvious conflict of interest that previously existed where the same Minister (Vatskalis) was responsible for all DIPE divisions including OEH.

The OEH is not a statutory body and hence is not independently accountable to parliament via annual reporting requirements. It is therefore difficult for the government and community to assess whether it is meeting its environmental protection responsibilities.

Government agencies can be both the proponent of projects and the regulator of subsequent environmental compliance conditions, setting up a potential conflict of interest.

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<sup>2</sup> The Environment and Heritage Division of DIPE is a pseudo-EPA for the NT at present.

The Department of Business, Industry and Resource Development is an example of this with respect to mining proposals. DBIRD works cooperatively with mining companies to assist their exploration for economically mineable deposits. This often results in a close working relationship. Once a deposit is proved viable, the level of environmental assessment is jointly decided by OEH and DBIRD, and then draft EIS guidelines are set by OEH, circulated for public comments then given to the mining company to address queries and concerns, for final review by OEH. Recommendations for operating conditions are then compiled by OEH and passed to the Environment Minister. The Minister has the legal right to amend the operating condition recommendations before passing them to the Mining Minister, DBIRD and the proponent. DBIRD then monitors compliance, creating a potential conflict of interest where the agency that has worked closely with the mining company to establish the mine is the regulator. An independent EPA would alleviate any potential conflict of interest and increase public confidence in the process.

ALFC has been told that pastoralists who have illegally cleared land have been granted retrospective permission for this clearing by the Pastoral Land Board. If true, this is a clear case of the regulating agency being too close to the proponent.

There is inadequate formal public input to government policies and directions on environmental protection.

As an example, the current development consent and environmental impact processes have limited community input. There are limited mechanisms to enhance the community's expertise or to capture local knowledge in this area. The EIS process would benefit from a DCA-like panel of community review.

There are significant gaps in environmental protection tools (e.g. no State of the Environment Report).

For example, diffuse sub-optimal land management practices on pastoral and aboriginal land in central Australia are resulting in a slow decline of biodiversity values. It is a 'death by a thousand cuts'. The development of environmental protection tools such as financial incentives to protect and enhance the biodiversity of, these lands would benefit all parties. An EPA would be perfectly placed to coordinate and grow such schemes,<sup>3</sup> monitor the outcomes and refine them over time.

As another example, private land developers in central Australia are given very little assistance to develop best-practice energy and water management systems for their proposed subdivisions. The current White Gums subdivision proposal is a clear example of this where the effluent management system is least-cost (to the developer) rather than best practice (for the community) and is likely to result in off-site pollution and no meaningful substitution of effluent for potable water.

Lack of economic tools such as trading schemes or pollutant discharges to air and water will place NT businesses at an economic disadvantage in coming years compared to interstate enterprises. An EPA can develop such incentive programs in conjunction with industry and can then monitor compliance with the schemes.

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<sup>3</sup> Several pastoral properties in central Australia have recently commenced an Environmental Management System program to improve environmental outcomes and financial returns.

The lack of a regular State of the Environment report for the NT is also a critical missing tool, as it provides locally-appropriate benchmark information on the existing condition of areas, the main pressures affecting them and appropriate or existing management responses.

- *There is inadequate resourcing of EPA-like functions in central Australia.*

OEH has only one employee in central Australia with a focus on environmental issues (Peter Bannister). He is only able to react to day-to-day issues and queries rather than develop a consistent and strategic process to progressing local outcomes. ALEC understands there are around 22 employees of OEH, and it would seem reasonable to expect that more than one staff member be based in central Australia.

If an independent EPA is established across the NT, then its central Australian operation should be well resourced. This not only relates to on-ground staff, but also to administrative requirements such as offices, phones, vehicles, etc. If these resources are not forthcoming, then operational staff should be housed as discrete entities within existing government agencies so they can access full administrative support. Additional funding for EPA functions should not be at the expense of existing environmental programs in DIPE or other government departments.

- *Lack of expertise, poor agency commitment and inadequate legislation are resulting in poor enforcement outcomes.*

For example, no prosecution occurred for the cyanide spill on the Tanami Road in March 2002 despite clear evidence of deliberate dumping by the truck driver. Police and Worksafe staff conducted the investigation with no experience in environmental assessment procedures and so a clever solicitor was able to discredit the process. This would not happen if experienced EPA staff were in charge of investigations.

ALEC has been told that pastoralists who have illegally cleared land have been granted retrospective permission for this clearing by the Pastoral Land Board. If true, this is a clear case of the regulating agency being too close to the proponent.

There have only been two environmental pollution prosecutions in central Australia in 10 years - the BP and Shell fuel depot leaks in Alice Springs in the mid-1 990s.

Waste oil management remains an issue with haphazard stockpiles of full 44-gallon drums at the old abattoir site at the end of Smith St in Alice Springs.

- *The cumulative impact of numerous small developments are not assessed or regulated for their impact on a broad scale.*

For example, land clearing, seeding of buffel grass and bore establishment by pastoralists in central Australia is having a substantial impact on biodiversity yet is not managed by any overarching regional plan underpinned by good science. The Pastoral Land Board rarely denies permission for pastoralists to clear land. At Alcoota Station, permission was recently granted for the clearing of land and deliberate seeding with buffel grass despite a widespread understanding by government agencies and the community that the rampant spread of buffel grass has resulted in massive fires and significant biodiversity declines on pastoral properties, national parks and aboriginal land in recent years. A best-practice EPA

would have the scope and resources to assess these cumulative impacts and develop policies that control such activities (such as a moratorium on seeding buffel grass until its biodiversity impacts are better understood).

- *There is inadequate education and training of communities and businesses on optimizing environmental outcomes.*

A vigorous scheme would provide the ability and attitudes for these sectors to solve many of their own issues. For example, a campaign to educate Alice Springs homeowners on salt importation to the town's soils via over watering of gardens would reduce the impact of this pressing issue on building foundations. An EPA with a broad charter would be able to coordinate education and training programs of various government agencies.

### **The EPA's role**

The following roles are critical for a robust and effective 'best-practice' EPA:

- Reviewing and developing legislation, policies, goals, standards, guidelines, and codes of practice relevant to environmental protection.
- Monitoring and enforcing this operating framework.
- Environmental planning in conjunction with other government agencies and community bodies.
- Ensuring due recognition is given to the economic, social and environmental costs and benefits of environmental protection initiatives, both in proposed and existing developments.
- Conducting or commissioning scientific/economic research that allows fully-informed decision making
- Coordinating education and training programs for people and businesses to protect, restore and enhance their environment.
- Assist other government agencies to optimize environmental outcomes within government (e.g. developing generic 'green office' policies for energy, water, paper and other office resources).

### **Structure of an EPA**

The following should be included in any EPA model:

- *It should be an independent, statutorily constituted agency*

This is a common model across Australia and will provide the necessary accountability, freedom from political interference and separation from government agencies (with potential conflicts of interest) to operate as a best practice environmental protection regulator. It should be statutory so that only the parliament has the power to approve changes to its constitution.

- *It should be governed by an independent Board*

An independent board would provide an overall strategic direction for the ERA. It should be immune from Ministerial interference and comprise the CEO of the EPA and expert community members selected by an open, advertised process.

- *It should have formal accountability via annual reports and written reasons for all decisions.*

Accountability should also include regular meetings with government agencies, industry, interest groups and the community.

*There should be an appeals procedure for decisions.*

The appeals process should allow both developers and community members with legitimate concerns for the affected environment to appeal decisions as to whether an environmental assessment should be undertaken, what level of assessment occurs, queries into EPA recommendations and decision by Ministers or government agencies. This is far superior to current biases in the Development Consent process where only developers can appeal decisions.

### **Regional presence**

It is critical that an EPA maintain a well-resourced, experienced and expert regional presence across the NT. This will ensure critical local input to EPA activities and perspectives and maintain an effective but independent working relationship with government agencies, local industry, Aboriginal organisations, pastoralists and the general community.

## SUBMISSION NO. 16

**DARWIN CITY COUNCIL**  
Lord Mayor Mr Peter Adamson  
*Lord Mayor*  
Received 2 April 2004

**DARWIN CITY COUNCIL**

CIVIC CENTRE DARWIN NORTHERN TERRITORY  
LORD MAYOR'S OFFICE

Please quote: 419955AH

31 March 2004

The Committee Secretary  
Legislative Assembly of the Northern Territory  
Sessional Committee on the Environment and Sustainable Development  
PO Box 3721  
DARWIN NT 0801

Attention: Ms Delia Lawrie, MLA

Dear Ms Lawrie,

**Establishment of an NT Environmental Protection Agency - Submission**

Thank you for providing Darwin City Council with the opportunity to provide a submission to the Sessional Committee on the Environment and Sustainable Development's inquiry into the efficacy of operating an Environmental Protection Authority in the Northern Territory.

I am pleased to advise that Council, at its Meeting on Tuesday 30 March 2004, resolved to support in principle the establishment of a single Environmental Protection or similar Agency for the Northern Territory.

This support is underpinned by an expectation that further consultation on issues relating to Local Government generally and Darwin City Council specifically, would occur in due course

A briefing report on issues considered and discussed by Council is attached for your reference and information.

For further information please do not hesitate to contact either myself or Council's Director of Technical Services, Brendan Dowd on 89300581.

Yours sincerely

**PETER ADAMSON**  
**LORD MAYOR**

Harry Chan Ave Darwin GPO Box 84 Darwin NT Australia 0801 Phone (08) 8982 2517 Fax (08) 8982 2518  
email [lord.mayor@darcity.nt.gov.au](mailto:lord.mayor@darcity.nt.gov.au)

1. **Establishment of an Environmental Protection Agency for the Northern Territory - Formal Submission Request**

Report No.04TS0071 (15/03/04) Internal Ref No.419955

(Lord Mayor/Aid Bailey)

- A. THAT Report Number 04TS0071 entitled Establishment of an Environmental Protection Agency for The Northern Territory - Formal Submission Request, be received and noted.
- B. THAT the Council advise the Sessional Committee on Environment and Sustainable Development that Council:
- i. supports in principle the establishment of a single Environment Protection or similar Agency for the Northern Territory;
  - ii. would expect further consultation on issues relating to Local Government generally and Darwin City Council specifically.
- C. THAT a copy of Report Number 04TS0071 be included as part of Council's submission to the Sessional Committee on Environment and Sustainable Development.

DECISION NO.18\6552 (30/03/04)

Carried

ENCL: YES

**DARWIN CITY COUNCIL****DATE:** 15/03/04**REPORT****TO:** ENVIRONMENT AND INFRASTRUCTURE COMMITTEE / OPEN A **APPROVED:** AH**FROM:** DIRECTOR TECHNICAL SERVICES **APPROVED:****REPORT NUMBER:** 04TS0071 **APPROVED:****INTERNAL REFERENCE:** 419955**SUBJECT:** ESTABLISHMENT OF AN ENVIRONMENTAL PROTECTION AGENCY FOR THE NORTHERN TERRITORY - FORMAL SUBMISSION REQUEST**ITEM NO:****SYNOPSIS:**

The Legislative Assembly of the Northern Territory's *Sessional Committee on Environment and Sustainable Development* has asked for Council's submission with respect to its inquiry into the efficacy of the Northern Territory operating with an Environmental Protection Authority. **(Attachment A)**

**GENERAL:**

Introduction of Environmental Protection Agencies/Authorities interstate have been largely a direct result of *Agenda 21* and the subsequent signing of the *Intergovernmental Agreement on the Environment 1992* (IGAE).

The IGAE, signed by the Commonwealth, State and Territory Governments and the Australian Local Government Association (on behalf of all Local Governments), aims to facilitate the implementation of a uniform environmental regulatory and management regime across Australia.

The Honourable Marshall Perron, the then NT's Chief Minister, signed the IGAE on behalf of the Northern Territory Government. **(Attachment B - EPA framework schematic. A full copy of the agreement is available from the Environment Manager, upon request.)**

**Creation of EPA models** interstate have followed a common pattern of amalgamation of, and expansion on, existing environmental legislation to create a legislative "head of power" the *Environmental Protection Act*, and merger of existing state/territory departments dealing with environmental issues into a single EPA.

PAGE: 2

REPORT NUMBER: 04TS0071

SUBJECT: ESTABLISHMENT OF AN ENVIRONMENTAL PROTECTION AGENCY FOR  
THE NORTHERN TERRITORY - FORMAL SUBMISSION REQUEST

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**Operation of interstate EPAs** also followed nearly identical strategies that included delegation of significant administrative authorities/responsibilities and obligations arising from the *Environmental Protection Act* to local government.

**Key interstate EPA** issues include lack of adequate resourcing (human and financial) at state/territory and local government levels, delegation to local government without ongoing financial, administrative and scientific support.

**Key interstate EPA achievements** include introduction of coordinated legislative and management approach to environmental issues, improved environmental protection, incorporation of/consideration for environmental issues at the town planning stage and increased environmental awareness by industry, community and government.

**Key requirements for an efficient NT EPA**, from a local government perspective should include:

- Delegation of town planning responsibilities to local government if EPA responsibility devolution are contemplated in the NT model; and
- Ongoing adequate financial, administrative and training support for local governments where delegations/devolution are considered;
- Appropriately staged EPA introduction coupled with implementation of community and industry consultation and education programs prior to or during EPA framework/model development

Given the experiences of WA, SA, NSW, Vic and Qld, where introduction of an EPA has lead to improvements in environmental planning and management but also resulted in significant costs and responsibility devolution to local government, it is important to maintain a dialogue with NT government on this matter.

It would be beneficial to review, assess and report on the implications, benefits and disadvantages that the introduction of an EPA has brought interstate prior to proceeding with the development of a model or framework for a Northern Territory EPA.

Experiences from Northern Queensland and Northern Western Australia would be of particular significance.

Introduction of an EPA and associated legislation elsewhere has generally been beneficial, at least initially, by creating one piece of legislation dealing with environmental issues rather than the fragmented framework that was in place previously (by 1990 over 954 separate pieces of legislation dealt with environmental obligations/regulations). Formation of an EPA interstate has created environmental management frameworks that provided certainty for industry, commerce and community facilitating improved environmental health protection while streamlining development processes. However streamlined EPA policies and legislation gradually expanded and is today in most states cumbersome, expensive to police and not easily understood.

PAGE: 3  
REPORT NUMBER: 04TS0071  
SUBJECT: ESTABLISHMENT OF AN ENVIRONMENTAL PROTECTION AGENCY FOR  
THE NORTHERN TERRITORY - FORMAL SUBMISSION REQUEST

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Given the Northern Territory's peculiar geography and demographics any NT EPA framework should be based on results of extensive interstate research and with significant consultation between all levels of government, industry and the community.

**FINANCIAL IMPLICATIONS:**

EPA environmental compliance regimes for Council activities interstate has required substantial fund injections from local governments elsewhere and it is expected to be of similar magnitude in the NT. While usually additional financial resources were made available to Councils in other states, devolution of responsibility meant ongoing additional costs had to be borne by local government in the longer term.

**CORPORATE PLANNING IMPLICATIONS:**

Effective environmental protection is not possible without thorough assessment of the implications of new development at the planning stage. It is for this reason that local government interstate carry most of the town planning responsibilities with the exception of very large industry/ commercial or community infrastructure projects of state significance. Given the current legislative town planning framework in the Northern Territory, significant changes and delegation of certain development assessment function to local government would be required to ensure the effective implementation of a EPA framework based on responsibility sharing.

**LEGAL IMPLICATIONS:**

Not applicable at this stage but could be substantial depending on the EPA framework to be developed.

**ENVIRONMENTAL IMPLICATIONS:**

Beneficial environmental protection and pollution management outcomes are expected.

**PUBLIC RELATIONS IMPLICATIONS:**

Not applicable at this stage

**COMMUNITY SAFETY IMPLICATIONS:**

The project represents a positive contribution to endeavours to maintain the health of the environment and safeguard our way of life.

**DELEGATION:**

Not applicable at this stage.

**CONSULTATION:**

Not applicable at this stage

PAGE: 4  
REPORT NUMBER: 04TS0071  
SUBJECT: ESTABLISHMENT OF AN ENVIRONMENTAL PROTECTION AGENCY FOR  
THE NORTHERN TERRITORY - FORMAL SUBMISSION REQUEST

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**PROPOSED PUBLIC CONSULTATION PROCESS:**

Not available/Not known

**APPROPRIATE SIGNAGE**

Nil

**RECOMMENDATIONS:**

THAT it be a recommendation to Council:-

A. THAT Report Number entitled Establishment of an Environmental Protection Agency for The Northern Territory - Formal Submission Request, be received and noted.

B. THAT the Lord Mayor advise the Sessional Committee on Environment and Sustainable development that Council:

- Supports in principle the establishment of an Environment Protection or similar Agency for the Northern Territory
- Would not support the devolution of any powers duties or functions to Local Government without:
  - Devolution of Town Planning powers and,
  - Ongoing financial and non financial support

**ANGELIKA HESSE**  
**ENVIRONMENT MANAGER**

**BRENDAN DOWD**  
**DIRECTOR TECHNICAL SERVICES**

Any queries on this report may be directed to Angelika Hesse on extension 530.

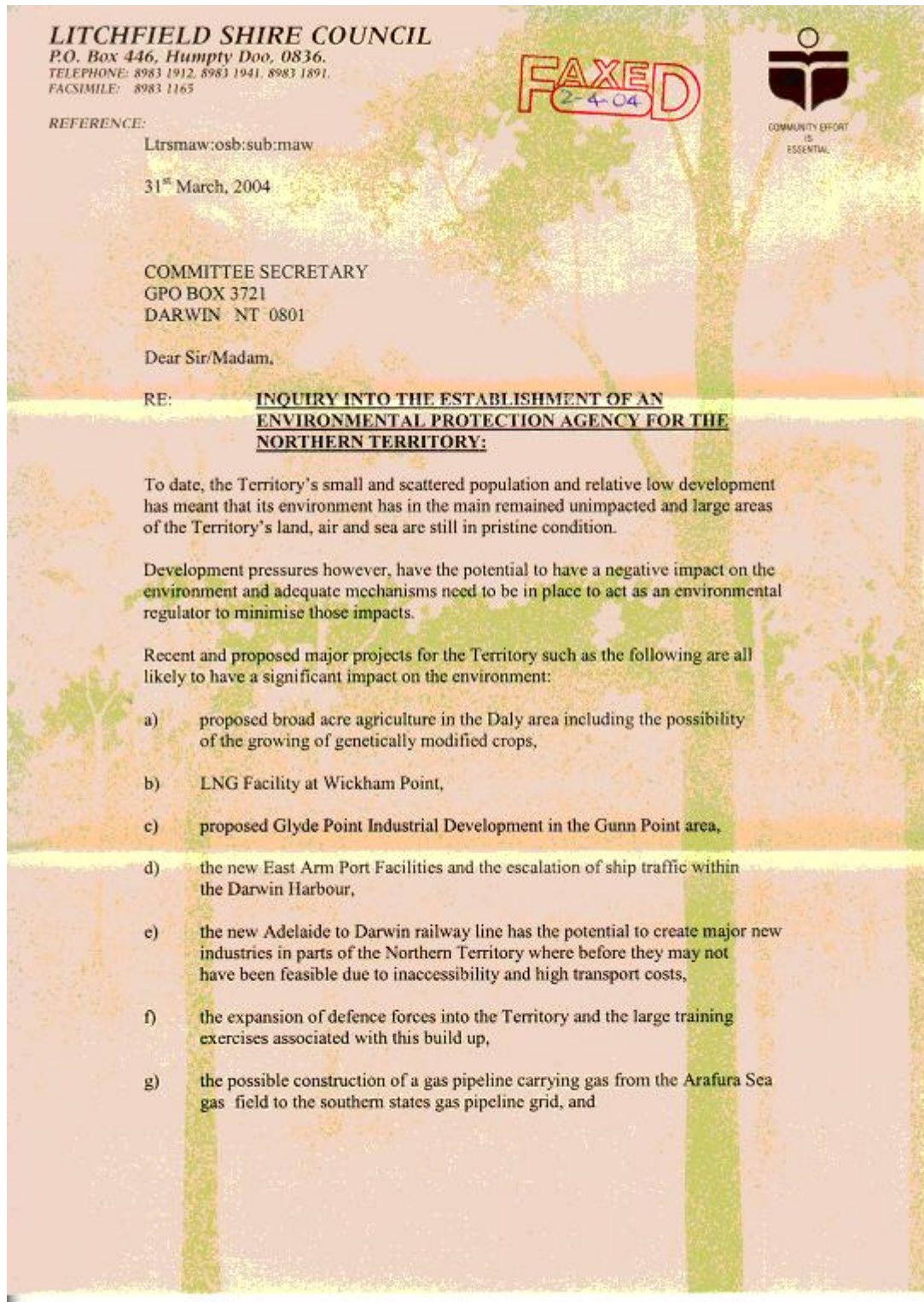
## SUBMISSION NO. 17

## LITCHFIELD SHIRE COUNCIL

Mr Peter Visentin

*Shire Manager*

Received 2 April 2004



Page...2

- h) the corresponding population increase that will be associated with these new industries and the need to provide appropriate services.

These development examples and no doubt many others will have the effect of negatively contributing to the quality of the Territory's environment unless they are undertaken in a "sustainable" and controlled way and as such the Council supports the establishment of an Environmental Protection Agency for the Northern Territory to act as the environmental watchdog and regulator for these and future development which is sure to intensify.

Council would prefer to see such an agency as an independent authority established under its own legislation however at this stage of the Territory's development Council acknowledges that such a model may be beyond the capacity of the NT government to fund and may have to initially be established as part of an existing department. Either way the agency needs to be independent, well funded and resourced otherwise it will not have the ability of meeting its objective of protecting the Territory's environment.

The environment should be the prime concern of every government as it is what sustains human and other life and in this contents it should be in everyone's interest to ensure that the Territory has an Environmental Protection Agency entrusted with the broad objective of protecting the Territory's environment and the capacity to achieving this objective.

It would be appreciated if these few comments could be taken into consideration when assessing the need to establish an Environmental Protection Agency for the Northern Territory.

Yours faithfully,



PETER VISENTIN  
For LITCHFIELD SHIRE COUNCIL

## SUBMISSION NO. 18

## DEPARTMENT OF INFRASTRUCTURE, PLANNING AND ENVIRONMENT

Mr Barry Chambers  
Chief Executive Officer  
Received 2 April 2004



**Northern Territory Government**  
Department of Infrastructure, Planning and Environment

8<sup>th</sup> Floor, Cavenagh House  
Darwin NT 0800  
Telephone: (08) 8999 6160

GPO Box 1680  
DARWIN NT 0801  
Facsimile: (08) 8999 7178

Our Ref: EN2004/0020  
D2004/0001-0136

Mr Graham Gadd  
Secretary  
NT Sessional Committee on Environment and  
Sustainable Development  
GPO Box 3721  
DARWIN NT 0801

Dear Graham

I am responding to the invitation from Ms Delia Lawrie, MLA, the Committee Chair, to provide a submission to the Committee's inquiry into the efficacy of the Northern Territory operating with an Environment Protection Agency.

A submission from this Department is attached for consideration by the Committee. The appropriate departmental officer, should you require any further assistance is Ms Barbara Singer, Executive Director Environment and Heritage, who can be contacted on telephone 8924 4135 or e-mail [barb.singer@nt.gov.au](mailto:barb.singer@nt.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Chambers'.

BARRY CHAMBERS  
Chief Executive

3 / March 2004

**NORTHERN TERRITORY LEGISLATIVE ASSEMBLY SESSIONAL COMMITTEE ON  
ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

**INQUIRY INTO THE ESTABLISHMENT OF AN ENVIRONMENTAL PROTECTION  
AGENCY FOR THE NORTHERN TERRITORY**

**SUBMISSION BY THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND  
ENVIRONMENT**

**March 2004**

**TERMS OF REFERENCE**

The efficacy of the establishment of an Environmental Protection Agency for the Northern Territory inclusive of but not restricted to:

- (a) arguments for and against the establishment of an Environmental Protection Agency for the Northern Territory;
- (b) options for the structure of an Environmental Protection Agency, taking account of the demographic, geographic and financial context of the Northern Territory; and
- (c) if a particular model is recommended, options for its staged introduction.

## CONTENTS

### Part I – Background Information:

1. Introduction
2. What is an EPA?
3. History of Environmental Protection administrative arrangements in the Northern Territory
4. Current Environmental Protection administrative arrangements in the Northern Territory
5. Environmental Protection arrangements in other Australian jurisdictions
6. Environment Protection in some other regions of the world

### Part II – Addressing the Inquiry’s Terms of Reference:

- (a) Does the Northern Territory need to establish an EPA?
  - Independence
  - Lack of public confidence in the present environmental protection regime
  - Better integration of functions and responsibilities
  - Value-adding
- (b) Options for an EPA in the Northern Territory
  - Option 1: Government Agency
  - Option 2: Statutory Authority
  - Option 3: Statutory Officer
- (c) Staging the introduction of an EPA in the Northern Territory
  - Timing Implications
  - Legislative Implications
  - Resource Implications

### Part III – References

#### Attachments:

- Attachment A – Functions of the Office of Environment and Heritage
- Attachment B – Summary of the various environment protection Agencies and Authorities operating in Australia
- Attachment C – Environmental Regulation of mining and petroleum activities
- Attachment D – Options for an Environment Protection Authority in the Northern Territory
- Attachment E – DIPE Annual Report

## PART I – Background Information

### 1. Introduction

This submission seeks to present factual information regarding the establishment of an Environmental Protection Agency for the Northern Territory. The submission has been prepared by the Department based on the collective experience of its senior management and staff. The Department and its various operating units has been drawn from 3 former agencies in 2001 and has a wide range of practical experience in dealing with environmental issues from different perspectives.

The Department includes the existing Office of Environment and Heritage which operates with relative independence in the agency structure and which has had a separate portfolio Minister since 2003.

### 2. What is an EPA?

The acronym EPA, as used in Australia, can mean either an Environment Protection Authority or an Environment Protection Agency.

**Environment Protection Authority** – can mean a statutory government body (with an independent Board that makes policy and strategic decisions or recommendations to Government in relation to environment protection and/or environmental assessment matters). While the Board of an Environment Protection Authority is usually serviced by the relevant Government environment agency and may have its own dedicated full-time staff, it would usually be accountable directly to a Minister.

**Environment Protection Agency** – usually refers to a government department/office that implements the policy and strategic decisions developed by the Government. The Agency is generally responsible to a Chief Executive and a Minister for implementing the day-to-day regulation of environmental protection activities, and would be gazetted as a government agency in the Administrative Orders Arrangements.

An Environment Protection Agency does not usually include parks and wildlife or conservation and natural resource management functions within its portfolio responsibilities.

### 3. History of Environment Protection administrative arrangements in the Northern Territory

The first dedicated resources allocated to environment protection services in the Northern Territory occurred with the establishment of an Environment Unit within the Department of the Northern Territory in 1974. This followed the passage of the Commonwealth's Environment Protection (Impact of Proposals) Act 1974. This Unit was initially responsible for environmental impact assessment of new development proposals.

At the time of Self-Government in 1978, the Environment Unit was transferred to what became the Conservation Commission of the Northern Territory, and over the next 17 years its responsibilities were broadened to encompass the full range of environment protection services. The Northern Territory Environmental Assessment Act was passed in 1984.

Further changes occurred in 1995 when the Environment Unit became a Division of the newly created Department of Lands, Planning and Environment. The Heritage function was also added to the Environment Division at around the same time. The new Waste Management and Pollution Control Act was passed in 1998.

In November 2001 as part of the reorganisation of the Northern Territory Public Service the Environment Division was included in the current Department of Infrastructure, Planning and Environment (DIPE), following amalgamation of the Department of Lands, Planning and Environment, the Territory Parks and Wildlife Commission, and the Department of Transport and Works.

The latest change occurred in 2002 with the establishment of the Office of Environment and Heritage within DIPE. The Greenhouse Unit was also added to the Office at that time.

#### **4. Current Environment Protection administrative arrangements in the Northern Territory**

The Office of Environment and Heritage, within the DIPE was formed in early 2002 to provide for environment protection, environmental impact assessment, greenhouse policy and heritage conservation services within the Northern Territory. The Office reports directly to the Minister for the Environment and Heritage.

The Office of Environment and Heritage is currently responsible for:

- Environmental impact assessment of all new development proposals;
- Environmental regulation of industrial and other polluting activities (excluding mining);
- Provision of advice and participation in inter-governmental negotiations on national, international and Commonwealth environmental issues affecting the Northern Territory;
- Heritage conservation and protection services; and
- Greenhouse matters and policies on a whole-of-Government basis.

The Office of Environment and Heritage administers the:

- *Environmental Assessment Act;*
- *Waste Management and Pollution Control Act,*
- *National Environment Protection Council (Northern Territory) Act;*
- *Ozone Protection Act;*
- *Environmental Offences and Penalties Act,*
- *Heritage Conservation Act; and*
- *National Trust (Northern Territory) Act.*

The Office of Environment and Heritage is administratively part of DIPE and is therefore accountable to the agency's Chief Executive for policy, staffing and financial matters. However, for transparency purposes, the Office reports directly to a separate Minister to maintain its independence from the development functions of DIPE, particularly for environmental impact assessment and prosecution purposes.

A more detailed list of functions carried out by the Office is at Attachment A.

Other related environmental functions including land conservation, bushfire and weeds management, water resources management, marine conservation, parks management and wildlife conservation services are the responsibility of the Conservation and Natural Resources Division within DIPE.

The Commonwealth Department of the Environment and Heritage also plays a role in environmental protection in the Northern Territory, particularly under the provisions of the *Environment Protection and Biodiversity Conservation Act (EPBC Act)*. Any development proposal in the Northern Territory that potentially affects a matter of national environmental significance and triggers the *EPBC Act* must satisfy Commonwealth environmental impact assessment requirements and be approved by the Commonwealth Minister for the Environment and Heritage.

Matters of national environmental significance can include impacts on World Heritage areas and internationally listed RAMSAR wetlands, nuclear actions, developments impacting on marine areas controlled by the Commonwealth, and development proposals that may affect listed migratory species and listed threatened species and ecological communities.

The Northern Territory Government, through the Minister for the Environment and Heritage, has concluded a bilateral agreement with the Commonwealth that accredits the Northern Territory environmental impact assessment process for proposals that trigger the *EPBC Act*. Under the bilateral agreement the Commonwealth's assessment requirements can be satisfied through the application of the Northern Territory's environmental impact assessment process to proposals that trigger the *EPBC Act*. The Commonwealth has yet to conclude a bilateral agreement with any Australian jurisdiction relating to accreditation of approval processes. The Commonwealth Minister for the Environment and Heritage therefore retains approval powers for Northern Territory development proposals that trigger the *EPBC Act*.

## **5. Environment Protection arrangements in other Australian jurisdictions**

There are different approaches to environment protection through the use of EPAs in Australia. The responsibilities of Environment Protection Agencies and Authorities vary across the jurisdictions and the nomenclature can be confusing, particularly as the term EPA can refer to a government agency or to an associated EPA Board.

Environment Protection Authorities (EPA) and related EPA Boards have been established in Victoria, NSW, South Australia and Western Australia. Tasmania and the ACT have similar bodies but they are not called EPAs. In Queensland the Environment Protection Agency is a government department and there is not a separate EPA Board.

ACT, Victoria and South Australia do not include environmental impact assessment responsibilities under their EPA portfolio. ACT and Queensland EPAs include responsibility for heritage and nature conservation, parks and wildlife. The Queensland, NSW and Tasmania EPAs have responsibility for environmental regulation of mining activities.

EPAs in Australia also vary in size and composition. Usually the Chief Executive Officer (CEO) of the relevant government agency is involved with the Board of an Authority (if present) in some capacity, usually as an *ex officio* member or as Chairman (eg Victoria). Other members of the Board are usually appointed on the basis of their expertise in environmental protection, industry, law, local government, agriculture,

environmental science, etc. In some jurisdictions the expertise of Board members is prescribed in the relevant legislation.

None of the EPAs and their Boards (where present) are truly “independent” in the sense that they are all government appointed and funded and they report to government through the relevant Environment Minister.

The only substantive difference between the Northern Territory and the other jurisdictions, except Queensland, is that the Northern Territory does not have the equivalent of a single, statutory EPA Board advising the Minister/Government.

The basic model for existing EPAs in Australia is:

a government agency, staffed by public servants, to carry out all statutory and other environment protection functions (similar to those undertaken by the Northern Territory Office of Environment and Heritage); and

an EPA Board of 3-10 members, appointed from outside the public service, by the Government or Environment Minister to provide independent advice to the Minister on strategic direction and environmental policy matters. The Board usually does not have any operational role and in most jurisdictions receives professional and technical support from the environment agency. The Board tends to have its own dedicated Executive Officer and staff.

The role of the EPA Boards also varies across jurisdictions. For example:

- in NSW, the EPA Board appears to be independent of government direction but ultimately advises the Minister on any matter relating to the protection of the environment either at the request of the Minister or on the initiative of the Board. However, the EPA Board in NSW does have some specific decision-making functions in its own right.
- in Tasmania, the Minister can require the Board of Environmental Management and Pollution Control to refer any matter for his or her decision, but may not direct the Board on how to exercise its powers.
- in Victoria and WA, the Board’s recommendations to the Minister are advisory only.

Another variation to the above exists in the ACT which has a Commissioner for the Environment appointed by the Minister. The Commissioner is responsible for State of the Environment reporting, for investigating complaints from the community about management of the environment by government agencies, and for conducting investigations directed by the Minister. The Commissioner provides an annual report to the Legislative Assembly.

Attachment B provides a summary of the different Agencies and Authorities currently operating in Australia.

## **6. Environment Protection in some other regions of the world**

### **New Zealand**

New Zealand has a Parliamentary Commissioner for the Environment. The Commissioner is independent of the government of the day and his/her role is to review and provide advice on environmental issues, agencies and processes, established by the Government, to manage the environment.

### **Canada**

Within the Office of the Auditor General of Canada there is a Commissioner of the Environment and Sustainable Development. The Commissioner monitors the implementation of Sustainable Development strategies. Environmental issues are integrated into the value for money audits performed by the Office of the Auditor-General, which have traditionally focused on the economy, efficiency and effectiveness of government activities. A statutory public petition process on environment and sustainable development issues is also provided. Annual reports are provided to the Parliament.

Canada also has an Environmental Assessment Agency that promotes environmental assessment as a planning tool to protect and sustain a healthy environment. The Agency reports to the Minister of the Environment. Federal departments and agencies must undertake environmental assessment before they:

- carry out a project;
- provide financial assistance to enable a project to be carried out;
- sell, lease or otherwise transfer control or administration of land to enable a project to be undertaken; or
- issue an authorisation to enable a project to go forward.

### **United States**

The US has an independent Office of Inspector General within the Environmental Protection Agency (EPA). The Office performs audits, evaluations and investigations of the EPA and its contractors, to promote economy and efficiency, and to prevent and detect fraud, waste and abuse. The Office also provides Ombudsman and Hotline services to review public complaints about EPA programs and activities. Twice-yearly reports are provided to Congress.

### **United Kingdom**

In the UK the Environment Agency is a non-departmental public body (NDPB). Legally, the Board constitutes the Agency and is directly responsible to Government Ministers for all aspects of the Agency's organisation and performance. It is through Ministers that the Agency is accountable to Parliament for ensuring that the Agency fulfils its statutory duties and operates with propriety, regularity, economy, efficiency and effectiveness. The Board has 15 members including the Chairman and Chief Executive. It delegates the Agency's day-to-day management to the Chief Executive and staff.

## PART II – Addressing the Inquiry’s Terms of Reference

### (a) Does the Northern Territory need to establish an EPA?

The answer to this question depends on the problem and/or issues that need to be addressed, and whether or not an EPA will provide the desired solution.

An EPA is a particular governance structure that has been adopted by some jurisdictions, presumably to meet a particular need or purpose. Identifying a valid reason(s) for establishing an EPA is therefore the key to whether a similar governance model is desirable for the Northern Territory, or whether adjustments to the existing legislative and administrative arrangements could achieve the same result.

The following are suggested as possible lines of inquiry by the Committee in considering whether the Northern Territory needs to change its present system of environmental protection:

#### **Independence**

The current calls by some members of the public for an EPA in the Northern Territory cite “independence” as the main justification. This implies an EPA that would be (more?) independent of Government. As indicated above, none of the EPAs and their Boards (where present) in the other Australian jurisdictions are truly “independent” of government, in the sense that they are all government appointed and funded and they report to government through the relevant Environment Minister. The day-to-day implementation of environmental protection legislation and policies is carried out by the relevant government agencies. However, the existence of some form of an independent body (board/council/committee) advising government on environmental matters, perhaps similar to the Northern Territory Heritage Advisory Council model, may satisfy the public calls for a more independent system of monitoring environmental protection services in the Northern Territory.

An alternative model would be for the Northern Territory to have an independent Commissioner for the Environment acting as an environmental watchdog, advising government on environmental matters and investigating related community complaints, as has been adopted in the ACT and New Zealand.

The systems adopted by Canada and the US appear to be more focussed on auditing the efficiency and effectiveness of the government agencies charged with environmental protection, rather than directly on the business of managing the environment.

The independence issue may also raise concerns about the location of the Office of Environment and Heritage within DIPE. The EPAs in the ACT, NSW and Tasmania are part of larger departments. In the Northern Territory there are many practical advantages with the present location of the Office of Environment and Heritage. Being a relatively small agency of some 30 staff, the Office has direct access to the scientific expertise available from the other Divisions of the Department and relies on the Department’s administrative support services (human resource management, financial, legal, IT, etc). Separate Ministerial-reporting arrangements by the Office ensure its independent role in advising the Government on environmental matters. It is also the case that the management structure of the Department allows for early notification of infrastructure design proposals and to ensure high quality environmental management

is built into these at an early stage. On these grounds it may be counterproductive and more expensive to establish the Office as a stand-alone agency.

### **Lack of public confidence in the present environmental protection regime**

It is not clear from the current calls for an EPA in the Northern Territory whether this stems from:

- a lack of confidence by the community with the existing arrangements;
- in the standard of environmental protection that is practised in the Northern Territory; and/or
- particular interest groups who may be dissatisfied with their level of involvement with the present system.

There is no known suggestion for example that environmental outcomes for development projects in the Northern Territory are inferior to the outcomes achieved in other Australian jurisdictions. Such a proposition would rest on a case-by-case review of Territory projects with analogous projects elsewhere, and this has not been done. Consequently, most of the discussion relating to an EPA appears to be focussed on the systems for making decisions about environmental matters and on preventing environmental incidents such as infrequent chemical spillages.

All systems can have their deficiencies, whether this is due to inadequate legislation, inefficient practices, finite resources and so on, that may not necessarily be overcome by simply changing governance structures ie. establishment of an EPA may not by itself improve the system in any measurable way.

Instead of creating an EPA structure in the Northern Territory, perceived community concerns might be addressed, for instance, by amending the environmental assessment legislation to include specific enforcement provisions, allow for appeals, make the Minister's recommendations on environmental impact assessment outcomes mandatory rather than advisory, and so on.

### **Better integration of functions and responsibilities**

The issue of environmental regulation of mining and petroleum activities in the NT is almost certain to be raised by some respondents to this Inquiry. The Department of Business, Industry and Resource Development (DBIRD) currently regulates all aspects of mining and petroleum activities, including environmental matters. A paper dealing with the issue is attached to this submission (Attachment C).

Similar considerations may also be raised in relation to the environmental regulation of aquaculture and agricultural activities (currently DBIRD), and for the administration of the *Dangerous Goods Act* controlling the transport, storage, handling and disposal of dangerous goods (NT WorkSafe).

In relation to the *Dangerous Goods Act* there may be a community perception that responsibility for administering this legislation should transfer to the environment agency. This would overlook the fact that the legislation covers a broader range of responsibilities than environment protection. Administration of dangerous goods is mainly focussed on the safe transport, storage, handling and use of these goods while

in transit and in the workplace. The primary concern is for the safety of workers and the public from improper practices or accidents.

The *Waste Management and Pollution Control Act*, administered by the Office of Environment and Heritage, provides complimentary legislative mechanisms for addressing the impact of the deliberate or accidental release and the disposal of these substances into the environment. In practice, the demarcation of responsibilities between NT WorkSafe and the Office of Environment and Heritage is clear and has not created any major difficulties in recent times.

When an incident occurs that results in chemicals reaching the environment, the Office of Environment and Heritage provides advice to the emergency authorities (in the first instance) to minimise environmental consequences, and subsequently gets involved in supervising the clean-up activities. NT WorkSafe usually conducts the investigation into why the incident happened, whether any breaches have occurred of the *Dangerous Goods Act* standards for the proper transport, storage, handling and use of the chemicals, and any other cause. There is close cooperation between the two agencies, and where it can be demonstrated that a breach of the *Waste Management and Pollution Control Act* has also occurred, prosecution action under one or both Acts is available.

It is usually the case that a major incident or spill will involve a number of agencies. Police involvement is necessary to secure the site, Fire and Emergency Services to deal with immediate public safety issues, etc. No one agency, EPA or otherwise, could single-handedly be responsible for all phases of the response. The key is for the respective roles to be identified and for response activities to be coordinated.

For security/terrorism events (eg chemical, biological and radiation incidents) an EPA would generally play a secondary advisory role to the principal on-scene response agencies. This role may involve provision of advice on clean-up and disposal procedures to minimise environmental impacts.

### **Value-adding**

The value of an EPA in achieving better environmental outcomes for the Northern Territory could be a matter of perception, and its success will depend on the form and role of the EPA model adopted.

Assuming that the Office of Environment and Heritage will continue to carry out the day-to-day environment protection functions on behalf of the Government, the capacity of an EPA to value-add is likely to result from the establishment of an associated statutory body (board/council/commissioner).

The perception that an EPA would provide a greater level of independence and transparency in the administration of environmental protection by the Government is likely to increase the public's confidence in these matters.

The availability of board members with specialist expertise to supplement the advice received by the Government from its own environmental officers could assist in resolving particular environmental issues and lead to better policy and strategic directions for environmental management. An EPA board/commissioner would also be able to investigate and give independent advice on matters requested by the Minister.

**(b) Options for an EPA in the Northern Territory**

For the Northern Territory, the following options could be considered:

**Option 1 - government agency** (Queensland model) - the EPA would be based on the present Office of Environment and Heritage. The Office would become the EPA (by name and/or by legislation) and be either a stand-alone government agency, or continue to be attached to DIPE and report directly to a separate Minister. This option could also involve changes in the functions assigned to the EPA and amendments to existing legislation to strengthen the Minister's powers to require (rather than recommend) environmental conditions for development proposals and enhance the EPA's ability to monitor and enforce compliance with environmental requirements. This option would require clear and transparent governance structures and could be based on the example of the Office of the Director of Public Prosecutions within the Department of Justice.

**Option 2 - statutory authority** (NSW; Victoria; SA; Tasmania and WA models) - the present Office of Environment and Heritage (could be renamed as an Environment Protection Agency) would be maintained within DIPE and an independent statutory body would be established to advise Government on environment protection matters, e.g. an Environmental Protection Advisory Board of 3-6 members appointed by the Minister based on their expertise rather than affiliation with a particular industry or community group(s). With this option the role and powers of the Board would need to be clearly defined.

**Option 3 – statutory office** (ACT model) - the present Office of Environment and Heritage would be maintained within DIPE and the Minister would appoint a person to independently act as the Government's environmental watchdog to investigate and provide advice to the Minister on environment protection matters referred by the Minister, i.e. an Independent Environmental Adviser or Commissioner.

Attachment D provides further detail for these options.

**(c) Staging the introduction of an EPA in the Northern Territory**

Which, if any, of the above options should be implemented will depend on cost/benefit considerations, as well as ensuring political and public confidence. This needs to be balanced against the adequacy or otherwise of the existing environment protection regime in the Northern Territory, the scale of the environmental issues affecting the Northern Territory, the expectations of the community and the ability of the Territory to resource an appropriate EPA model. Whilst comparisons with EPA models adopted interstate is useful, this would overlook the fact that these models cater for populations and intensity of development pressures far in excess of what the Northern Territory is currently experiencing.

Whatever model the Territory adopts should reflect local needs and conditions. The answer is not immediately obvious but may emerge from the evidence presented to the Committee from the various Inquiry respondents.

In any case, it is not anticipated that any new arrangements would present particular implementation difficulties.

## Timing implications

**Option 1** (creation of a government agency EPA) is the simplest to implement and would involve minimal changes to the current administrative arrangements.

However, if additional environmental regulatory functions (mining, aquaculture, agriculture, hazardous goods, etc) and increased enforcement powers were to be added to the existing environment agency (Office of Environment and Heritage), some legislative and resource allocation changes would be necessary. Timing would be subject to completion of negotiations with other government agencies, industry and the public, and passage of legislative amendments through the Legislative Assembly – a process that could take several months.

**Option 2** (statutory authority EPA board/committee) is the most complex and costly of the options to implement, particularly if combined with changes to environmental regulatory functions of the associated government agency (as for option 1). This model could take several months to introduce because of the inter-agency negotiations and legislative amendments involved, and the time required to seek and appoint suitable board/committee members.

**Option 3** (statutory environmental watchdog position) could be implemented relatively quickly subject to the legislative changes involved. Any attendant changes to the environmental regulatory functions of the associated government agency (as for option 1) would lengthen the timing.

## Legislative Implications

Whatever EPA option may be adopted will require the revision of existing, environmental protection and assessment legislation within the Territory. The *Environmental Assessment Act*, last reviewed in 1994, is the most likely legislation to provide the statutory basis for establishing an EPA in the Northern Territory.

The Act currently specifies the statutory administrative procedures to be followed for the conduct of environmental impact assessment (EIA) of development proposals in the Northern Territory. A revision of the Act is desirable to modernise the legislation and to cater for changes to approaches in EIA that have occurred in the last few years (notably the Commonwealth's *Environment Protection and Biodiversity Conservation Act*).

The scope of the current Act could be broadened to encompass environmental management and sustainability provisions, and to allow for the establishment and role of an EPA, including any changes to environmental regulatory responsibilities.

A major review of the Act is likely to take some 18 months to complete – a similar timeframe to the review underway for the *Heritage Conservation Act*.

The *Waste Management and Pollution Control Act* is a less likely alternative option because the Act is potentially constrained in supporting the broader work of an EPA. It is designed to focus on waste and pollution management issues and not general environment protection matters.

The following outlines some related legislative issues that may arise in the course of this Inquiry:

- Appeals system

Should provision be made for judicial and or merits-based appeals; who should have standing to lodge appeals – those directly affected by a decision of the Minister/EPA (ie development proponents) or third parties; and who should decide appeals (i.e. the Minister, a Tribunal or independent party).

In any case, consistency with proposed amendments to the *Planning Act* would be desirable given the close interaction of these Acts, especially for major projects.

– Final development approvals

The trend for the Environment Minister to have greater power in determining whether or not proposed development activity can take place is emerging elsewhere. The Commonwealth *Environment Protection and Biodiversity Conservation Act* provides this power to the Minister for the Environment. Similar circumstances apply in South Australia and New South Wales.

– Environmental compliance and monitoring

The perceived conflict of interest in having industry agencies responsible for environmental regulation for their portfolio areas has generated a view in some areas of the public that environmental compliance and monitoring should be conducted by an environment protection agency/authority, rather than by the industry agency.

When the *Environmental Assessment Act* was last reviewed, the mining industry was a prominent stakeholder and is likely to be sensitive to any changes to the current environmental regulatory regime in the Northern Territory. However, the administrative responsibilities of agencies is a matter of policy for the Government and DIPE does not make a submission in respect of this issue.

– EPA's role

Should an EPA (board/committee) only have an advisory role and/or an approval role? EPAs in the other jurisdictions have varied roles. Most are advisory but in some jurisdictions the Minister can delegate his/her power to the EPA to approve items such as “Environmental Management Plans” on a case-by-case basis (WA) or to determine environment policies and strategic directions (NSW). In SA the Board can direct the Chief Executive of the EPA (a public servant).

In WA the operational relationship between the EPA and the Department of the Environment is subject to a formal Service Agreement as the EPA is supported by and is responsible for directing a dedicated staffing unit of public servants (the EPA Service Unit) housed within the Department. The staff within the EPA Service Unit also have obligations to the Director General of the Department and the Minister. In other jurisdictions the relationship is less complex and is generally through the CEO of the government environment agency.

### **Resource implications**

These will depend on the particular EPA model adopted and any changes made to the day-to-day responsibilities and statutory functions of the Office of Environment and Heritage or its successor.

Perusal of the annual reports of EPAs in other jurisdictions does not indicate the specific budget allocation required to meet annual EPA expenses. This would be a matter for investigation by the Inquiry Committee, although DIPE could assist by providing estimates relating to any specific model. However, it could be expected that the costs of most of the interstate models would run into several hundreds of thousands of dollars.

Option 2 is likely to be the most expensive EPA model for the Northern Territory. Costs will depend on whether the Chairman of the EPA Board is a full-time or part-time salaried position, whether sitting fees are paid to the other members, the level of administrative support provided to the Board, frequency and location meetings, operational expenses involved (office accommodation for the Chairman and associated staff, administrative expenses, IT and communication facilities, document production) and so on.

The existing Northern Territory Heritage Advisory Council provides a comparative cost model. The Council meets four times a year, has nine members (five non-government), and a part-time, non-salaried Chairman. The non-government members are paid sitting fees. Other costs include travel and accommodation expenses for members to attend meetings, and administrative support expenses. The Council costs in the order of \$100 000 per annum to maintain.

### **PART III – References**

For further information regarding Australian Environment Protection Agencies and Authorities the Committee may find the following websites useful:

*Australian Capital Territory* – [www.environment.act.gov.au](http://www.environment.act.gov.au)

*New South Wales* – [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

*Victoria* – [www.epa.vic.gov.au](http://www.epa.vic.gov.au)

*Queensland* – [www.epa.qld.gov.au](http://www.epa.qld.gov.au)

*Western Australia* – [www.epa.wa.gov.au](http://www.epa.wa.gov.au)

*South Australia* – [www.environment.sa.gov.au/epa](http://www.environment.sa.gov.au/epa)

*Tasmania* – [www.dpiwe.tas.gov.au](http://www.dpiwe.tas.gov.au)

*Australian Government* – [www.deh.gov.au](http://www.deh.gov.au)

**ATTACHMENT A****FUNCTIONS OF THE OFFICE OF ENVIRONMENT AND HERITAGE****Environment Protection Services**

- Co-ordinate NTG input to development of national and international environmental policies and strategies;
- Undertake assessments under the *Environmental Assessment Act* of public and private sector development proposals, including development applications under the *Planning Act*;
- Provide advice to decision-makers (eg. Ministers; Development Consent Authority; etc) on the safeguards and controls to facilitate sustainable development and to protect the environment;
- Undertake environmental compliance monitoring during construction and operation of major development projects;
- Develop and implement government policies and legislation for managing wastes and minimising environmental harm from pollution through the *Waste Management and Pollution Control Act*;
- Operate a 24-hour community Pollution Response Line;
- Issue and monitor wastewater discharge licences under the *Water Act*;
- License major Territory landfills and commercial waste contractors;
- Develop environmental objectives, guidelines, standards and codes of practice;
- Develop regional waste management plans and strategies in consultation with local government bodies and communities;
- Implement the NT Litter Abatement and Resource Recovery Strategy and the Northern Territory Litter Abatement Grants Program;
- Provide advice and secretariat services to the Litter Abatement Advisory Committee;
- Provide advice and assistance on oil spill contingency planning and develop guidelines for the prevention of coastal and marine pollution; and
- Develop and support community awareness programs in partnership with industry, other government agencies, local government bodies and community NGOs.

**Heritage Conservation Services**

- Undertake assessments in accordance with section 22 of the *Heritage Conservation Act*;
- Provide advice and support to the owners of declared heritage places;
- Co-ordinate the advertisement, processing and monitoring of the Northern Territory Heritage Grant Program;
- Provide advice and secretariat services to the Heritage Advisory Council and implement Heritage Advisory Council directions;
- Prepare and implement conservation plans for heritage places;
- Co-ordinate and develop the heritage trail program;
- Provide advice on heritage matters to government, development proponents and the community;
- Promote heritage and its conservation; and
- Develop and implement heritage policy at a national and Territory level.

**Greenhouse Policy**

- Provide leadership and coordination on all greenhouse matters for the Northern Territory, in order to achieve a 'whole of Government' approach to the management of greenhouse;
- Co-ordinate the NT Working Group on Greenhouse; and
- Co-ordinate and report on progress of activities associated with implementation of NT and national greenhouse strategies.

**ATTACHMENT B**

**Summary of the various environment protection Agencies and Authorities operating in Australia**

	<b>ACT</b>	<b>NSW</b>	<b>Victoria</b>	<b>SA</b>	<b>WA</b>	<b>Qld</b>	<b>TASMANIA</b>	<b>NT</b>
Title of Government Agency	Environment Protection Authority – part of Department of Urban Services	Environment Protection Authority – part of Department of Environment and Conservation	Environment Protection Authority	Environment Protection Authority	Department of Environment	Environment Protection Agency	Department of Primary Industries, Water and Environment	Office of Environment and Heritage – part of Department of Infrastructure, Planning and Environment

	<b>ACT</b>	<b>NSW</b>	<b>Victoria</b>	<b>SA</b>	<b>WA</b>	<b>Qld</b>	<b>TASMANIA</b>	<b>NT</b>
How constituted (statutory office holder, government department, independent board)	<p>Environment Protection Authority is a statutory position held by a public servant. There is no EPA Board.</p> <p>An independent part-time Commissioner for the Environment is appointed by the Minister. The Commissioner is supported by 2 full-time PS officers, and a range of paid and honorary expert assistants</p>	<p>Statutory EPA Board. An independent board of 9 part-time members, one of whom is the Director – General. The Board is appointed by the NSW Governor on the recommendation of the Minister.</p>	<p>Statutory EPA Board consists of 3 members appointed by the Vic Governor on the recommendation of the Minister. The Environment Protection Authority is legally constituted by a person appointed by the Governor to the position of Chairman. The EPA Board, an Executive and EPA staff assists the Chairman</p>	<p>Statutory EPA Board. An independent board consisting of 9 members appointed by the SA Governor</p>	<p>Environment Protection Authority. A statutory independent authority consisting of 5 full-time Chairman, a part-time Deputy Chairman and 3 other part-time members appointed by the WA Governor on the recommendation of the Minister. The Board is supported by a dedicated staffing unit</p>	<p>Government department. There is no independent Board/Authority</p>	<p>Environmenta l Management and Pollution Control Board. A statutory, independent body consisting of 5 members</p>	<p>Government Department. There is no independent Board/Authority</p>

	<b>ACT</b>	<b>NSW</b>	<b>Victoria</b>	<b>SA</b>	<b>WA</b>	<b>Qld</b>	<b>TASMANIA</b>	<b>NT</b>
Role of Board (advisory/ decision making)	N/A	Decision making – the Board determines EPA policies and long-term strategic plans	Advisory	Decision-making - responsible for the administration of the Act and directs the Chief Executive	Advisory – responsible for advising on the acceptability of new development proposals (including planning schemes and amendments) and for formulating environmental policy	N/A	Principal decision-maker.	N/A
<b>FUNCTIONS OF AUTHORITY:</b>								
Investigation & prosecution	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Environmental Impact Assessment	No	Yes	No	No – advisory role	Yes	Yes	Yes	Yes
Environment Protection Policies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Regulatory Activities	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

	<b>ACT</b>	<b>NSW</b>	<b>Victoria</b>	<b>SA</b>	<b>WA</b>	<b>Qld</b>	<b>TASMANIA</b>	<b>NT</b>
Development Assessment	Comments on proposed development	Not the determining authority, but comments on proposed development	Works approval	Not the determining authority, but power of veto over licensable activities.	Comments on proposal and makes recommendations	Comments on proposals	Can direct environmental impacts be assessed	Not the determining authority but makes recommendations

**ATTACHMENT C****ENVIRONMENTAL REGULATION OF MINING AND PETROLEUM ACTIVITIES**

In most jurisdictions, including the NT, environmental regulation of mining and petroleum activities rests with the relevant Mines agencies under mining statutes. NSW, Tasmania and Queensland are the exceptions. In these States environmental control of mining activities comes under the responsibility of the Environment Protection Authority (NSW), the Department of Primary Industries, Water and Environment (Tasmania) and the Environmental Protection Agency (Queensland). This arrangement has been in place in Tasmania since the 1970s and in Queensland since 1 January 2001.

**The Queensland Model**

Environmental regulation of the mining industry comes under the *Environmental Protection Act 1994* administered by the Environmental Protection Agency (EPA). The transfer of this responsibility from the Department of Natural Resources and Mines (DNRM) was part of the regulatory reform program adopted by the Queensland Government in 2001 to strengthen environmental management practices across industry.

Essentially, under the Queensland model, the holder or holders of a mining tenement (issued by DNRM) must also hold an environmental authority (issued by the EPA) for the mining activities on the tenement. "Mining activities" include any activities authorised by the DNRM to take place on a tenement and any other activities directly associated with the mining operation.

Applications for environmental authorities are publicly notified with the application for the relevant tenements. For significant mining proposals, there is public notification of all the proposed conditions, including environmental conditions.

During the public notification period any person may make a submission to DNRM about the proposed conditions of the draft environmental authority or any other aspect of the project. Objections are referred to the Land and Resources Tribunal, an independent statutory body which, *inter alia*, can mediate and make recommendations about the environmental authorities for mining claims and leases.

<b>Under the Qld model, the EPA:</b>	<i>Current responsibility in the NT</i>
Sets levels of environmental assessment for new applications.	The Minister for Environment and Heritage recommends conditions on advice from the Office of Environment and Heritage
Issues environmental authorities for mining activities on mining tenures (except for prospecting permits and mining claims) and sets environmental conditions for mining activities.	Department of Business, Industry and Resource Development taking into account environmental assessment recommendations from the Minister for Environment (recommendations are advisory only)
Assesses submitted environmental management documents (including plan of operations, environmental management plan, etc).	DBIRD (no regular involvement from the Office of Environment and Heritage)

<b>Under the Qld model, the EPA:</b>	<i>Current responsibility in the NT</i>
Conducts site inspections and audits to assess compliance with environmental conditions.	DBIRD (involvement from the Office of Environment and Heritage by invitation)
Sets the amount of financial assurance that holders of environmental authorities must lodge and decides any applications for the discharge of financial assurance, either during the mine life or at the end of the mine life.	DBIRD
Assesses the final rehabilitation report submitted with applications to surrender an environmental authority.	DBIRD
Enforces compliance with environmental controls.	DBIRD (unless an activity on the mine site results in off-tenure impacts necessitating action under other statutes, eg <i>Water Act; Waste Management and Pollution Control Act</i> )

Under the Queensland model, the Department of Natural Resources and Mines concentrates its activities on the facilitation of the mining and resources sector. With respect to environmental performance aspects, the Department:

- accepts and processes all applications for mining tenements and environmental authorities and refers the relevant sections to the EPA for environmental impact assessment;
- determines applications for mining tenements, and grants and regulates mining tenements;
- is responsible for the management and rehabilitation of abandoned mine sites;
- promotes and facilitates industry commitment to environmental best practice.

*Issues for the NT to Consider*

1. Performance of the Queensland Model

The performance of the Queensland Model would need to be closely examined before adoption in the NT. It should be noted that the Queensland Model only applies to mining activities, not to oil and gas-related activities. Adoption of the Queensland system was dependent on strong support from the local mining industry. It also coincided with a strong push by the “green” movement.

2. Is there justification for introduction of a similar Model in the NT

This will ultimately depend on a judgement as to whether a more independent system to regulate the environmental aspects of mining activities in the NT is required. Such a decision would have to take into account an examination of whether the current approach by the Department of Business, Industry and Resource Development to environmental regulation of mining in the NT is performing adequately in protecting the environment and is meeting community expectations. It would also need to confirm whether there are efficiencies and

long term benefits for the environment, industry, government and the community to be gained from a changed approach.

The NT Government has recently announced (NT News 23 February 2004) that a comprehensive review of the NT *Mining Act* is to be conducted. This review may offer an opportunity for addressing the above matters, although environmental controls relating to mining activities are embedded in the NT *Mining Management Act* and may be outside the terms of reference for the review.

3. Industry Reaction

The Queensland Government worked with industry, indigenous, conservation and other groups to build a practical model for environmental management of mining for some 5 years before introducing the current approach. It would be expected that the NT mining industry would have significant concerns with a proposed transfer of responsibility for environmental regulation of mining in the NT to the Office of Environment and Heritage, without considerable consultation.

4. Community/Public Perceptions

There have been calls over recent years, particularly from conservation groups, for a more independent and open approach in the NT for environmental regulation of mining activities. It is likely that the transfer of this responsibility to the Office of Environment and Heritage would be positively received in the general community, although it is arguable that the current approach is not perceived to be a significant concern in the general Territory population.

5. Legislative and Resource Implications

If new arrangements were to be introduced for the NT, appropriate changes to legislation and transfer of resources from the Department of Business, Industry and Resource Development would be necessary. If warranted, additional resources may be required to meet the community's requirements.

## ATTACHMENT D

Options for an Environment Protection Authority in the Northern Territory<sup>4</sup>

Options	Pros and Cons	Legislative and Other Implications
1. <b>Government agency</b>	<p><b>For:</b> Would be the simplest and least costly option to implement.</p> <p><b>Against:</b> Could be seen as maintaining the status quo and may not satisfy community expectations of an “independent” EPA.</p>	<p>May require some related legislative action, e.g. amendments to the <i>Environmental Assessment Act</i> to strengthen and broaden the statutory powers of the Minister/EPA.</p> <p>Additional resources may be required to review the legislation and to implement any significant changes in the agency’s responsibilities.</p>
2. <b>Statutory authority (board or committee)</b>	<p><b>For:</b> Could value-add to public confidence in the NT environment protection regime. Could enhance the environmental expertise available to Government. Would provide a mechanism for the Minister to refer an environmental matter for independent investigation by the board/committee.</p> <p><b>Against:</b> A more complex and costly system to implement than the other options. Could divert scarce resources from operational areas, without necessarily leading to improved environmental protection outcomes.</p>	<p>Would require new or amended legislation to establish the board/committee and to define its role and relationship to the associated government agency and Minister.</p> <p>Additional resources would be required for the board/committee to operate (sitting fees, administrative support, meeting costs). These could be substantial depending on size, role, frequency of meetings, etc.</p> <p>Any significant changes to the statutory and operational role of the associated government agency would also require additional resources.</p>
3. <b>Statutory officer (Commissioner for the Environment)</b>	<p><b>For:</b> May satisfy community expectations of an “independent” environmental watchdog that would be underpinned by statutory annual</p>	<p>Would require new or amended legislation to establish the statutory position and to define its role, powers and relationship to the Minister,</p>

<sup>4</sup> All of these options assume that the current Office of Environment and Heritage continues in its present role and within DIPE. Any significant changes to the functions of the Office and/or its establishment as a stand-alone government agency will have resource implications.

Options	Pros and Cons	Legislative and Other Implications
	<p>reporting to the NT Parliament.</p> <p><b>Against:</b> May lead to an adversarial approach if complaints focussed. May unnecessarily undermine public confidence in the present NT environmental protection regime – “something must be wrong”. Could become a default appeals mechanism if utilised by opponents of development proposals to attempt to intervene/overtake other statutory processes and decision-making systems eg. planning approvals.</p>	<p>the public and government agencies with environment protection responsibilities.</p> <p>This would need to be a salaried position requiring dedicated resources for administrative support.</p>

## SUBMISSION NO. 19

**MINISTERIAL ADVISORY COMMITTEE ON AQUACULTURE IN THE NT**

Mr Peter Blake

*Chair*

Received 1 April 2004

Direct correspondence to  
Mr Ric Fallu  
Executive Officer  
MACANT  
c/- Fisheries Group  
DBIRD  
PO Box 3000  
DARWIN NT 0801

File ref: F200YO258 DARWIN NT 0801

Ms Delia Lawrie, MLA  
Chair  
Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

Fax: 8941 2437

Dear Ms Lawrie

I write in my role as Chair of the Ministerial Advisory Committee on Aquaculture in the Northern Territory (MACANT). MACANT is a non-statutory committee advising the Hon Kon Vatskalis, Minister for Primary Industry and Fisheries, concerning the aquaculture industry in the NT. The Committee is comprised of both industry and government members.

At the last meeting of MACANT on 29 March 2004, there was discussion on the inquiry: *An Environment Protection Agency for the Northern Territory?* Industry members on the Committee were unanimous in their opposition to the establishment of an EPA. They believed that their sectors had established their environmental bona fides by adoption of codes of practice, successful appraisal by major environmental studies and a movement toward adopting ISO 14001 in the barramundi and prawn farming sectors. They also endorsed the present mechanism for environmental management in the Northern Territory believing that it was operating very successfully.

The industry members expressed concerns that an EPA might increase bureaucratic impositions over and above the current comprehensive levels of environmental assessment, as well as being prone to manipulation by narrow, or political interests.

Should you wish to discuss this matter further, please contact Ric Fallu, the Executive Officer of MACANT on 8999 2239.

Yours sincerely  
PETER BLAKE  
Chair MACANT  
1 April 2004

SUBMISSION NO. 20

**DEPARTMENT OF HEALTH AND COMMUNITY SERVICES**

Mr David Ashbridge  
*A/ Chief Executive Officer*  
Received 2 April 2004



**Northern Territory Government**  
Department of Health and Community Services

A/Chief Executive Officer  
Phone: (08) 8999 2441  
Email: david.ashbridge@nt.gov.nt

Reference: DF2003/4704  
Facsimile: (08) 8999 2800

Mr Graham Gadd  
Committee Secretary  
PO Box 3721  
DARWIN NT 0801

Dear Mr Gadd

**RE: Sessional Committee on Environment and Sustainable Development – Inquiry into Efficacy of Establishing an EPA in the NT**

Thank you for the opportunity to provide comments to the above inquiry. Your Terms of Reference provided a good basis for a broad exploration of the issue. Please find our submission attached.

Should you require classification of any of the points raised in the submission, please contact Nicola Slavin, Senior Policy Officer for Environmental Health on 89227181.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David'.

David Ashbridge

31 March 2004

PO Box 40596  
CASUARINA NT 0811  
ABN: 84 085 734 992  
www.health.nt.gov.au

**Legislative Assembly of the Northern Territory  
Sessional Committee on Environment and Sustainable Development****Submitting Organisation:** Department of Health and Community Services**Background**

The Department of Health and Community Services is primarily involved with environmental protection through the Environmental Health Program. Environmental health is encompassed within the broader area of public health and has a considerable overlap with environmental protection. In practice environmental health acts to improve health outcomes through the assessment, correction and control and prevention of environmental factors adversely affecting human health.

**Arguments for and against the Establishment of an Environmental Protection Agency in the NT**

Currently environment protection in the NT is departmentally focussed, with the NT Department of Infrastructure, Planning and Environment administering key legislation, namely the Waste Management, Pollution and Control Act 1998 and the Environmental Assessment Act 1994. The Chief Executive Officer of the DIPE has a range of authorising functions in regards to licensing, environmental audits and the appointment of officers. One of the limitations of the existing structure of environment protection in the NT is that since the Chief Executive Officer is a public sector employee and answerable to the minister his/her ability to act independently of the government may be questioned. The existing departmental structure combining the Office of Environment and Heritage with Planning and Infrastructure Units may be viewed by the general public as having the potential to cause a conflict of interest.

Establishing a separate, independent authority to manage environmental protection in the NT would be beneficial in so far as it would provide the appearance of independence from the government. Though from the perspective of the Environmental Health Program their contribution to draft environmental impact statements and public environmental reports would probably remain the same even if an EPA was to be established. Bringing all the legislation that is concerned with environment protection under one agency whether it is independent or otherwise of government, would be beneficial in that it would help to create a 'one stop shop' for the public.

In order to fully realise the potential benefits of an independent EPA the authority would need to be adequately resourced. Substantial change to the functions and structure of existing government departments would create confusion amongst the public and indeed staff. Change would need to be adequately managed and marketed to staff and the public, at a considerable cost. Rather than investing funds in the establishment of an EPA it can be argued that funds would be better directed to improving the resource base of existing agencies that deal with environmental protection. Currently under resourcing within the area of environment protection is impacting upon the ability of staff to ensure compliance with relevant legislation. Attention also needs to be focussed on improving communication between the agencies dealing with environmental protection to maximise environmental outcomes through the provision of the best specialist advice and to prevent duplication.

Whilst the Environmental Health Unit of the DHCS undertakes some activities which in other states fall under the remit of an EPA, such as radiation protection, approval of

septic tanks and nuisance prevention, the principle focus of the Environmental Health Unit is on protecting public health and safety. There is some concern that if such activities were to come under the Jurisdiction of an EPA that public health and safety concerns might not be adequately addressed since the principle focus would be environmental protection. In terms of radiation protection, in the future it is likely that radiation protection legislation will be administered by a national autonomous organisation due to the changing world scene particularly heightened terrorism activity.

### **Options for the structure of an Environmental Protection Agency taking account of the demographic, geographic and financial context of the Northern Territory**

As discussed there are a variety of arguments both for and against the establishment of an EPA in the NT. Since the key argument presented for establishing an EPA is to create an independent 'watch dog' the chosen structure would need to reflect this. The structure of the Victorian EPA may be a possible model. Under Victorian legislation an Environmental protection Authority has been established with the full range of statutory powers under the Act. The Victorian EPA employs its own staff, which helps to ensure that it maintains control of day to day operations. In Victoria the Minister has no power to direct the Authority.

An alternative to this model which would probably be more cost effective, would be an Environmental Protection Authority which administers specified statutory functions and rather than employing its own staff enters into an arrangement with the NT Office of Environment and Heritage. Under this model the Authority's role would be focused on licensing and enforcement.

### **Conclusion**

Though arguments can be made both for and against the establishment of an EPA. The high costs associated with developing a new agency particularly if it was to be an independent authority employing its own staff would be prohibitive. Unless adequately funded a new EPA is unlikely to be more any more effective at ensuring environmental protection than the current structures that are in place. Undoubtedly the effectiveness of existing government departments who deal with environmental protection would be enhanced by increasing levels of resources. It can be argued that rather spending funds on the establishment of an EPA that it would be more cost effective to improve the resource base of existing agencies so that they can more effectively carry out there statutory roles and responsibilities. Improving communication between government departments would also help to maximise outcomes in relation to environmental protection.

SUBMISSION NO. 21

**EcOz ENVIRONMENTAL SERVICES**

Ms Penny van Oosterzee and Mr Noel Preece

*Managing Director and Director/ Principal Environmental Scientist (respectively)*

Received 2 April 2004

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**Submission to the Sessional Committee  
on Environment and Sustainable  
Development**

Regarding the need for an Environmental Protection Authority

CONFIDENTIAL

**ECOZ ENVIRONMENTAL SERVICES**



1st Floor Arkaba House

13 The Esplanade

GPO Box 381

Darwin NT 0801

Ph: (08) 8981 1100

Fax: (08) 8981 1102

mail: [ecoz@ecoz.com.au](mailto:ecoz@ecoz.com.au)

## Table of Contents

<b>1. National view</b> .....	<b>2</b>
<b>2. The Northern Territory</b> .....	<b>2</b>
2.1. Overview .....	2
2.2. Discussion .....	2
2.2.1. <i>Lack of integration</i> .....	2
2.2.2. <i>Transparency of Process</i> .....	3
2.2.3. <i>The Management of Water</i> .....	3
2.2.4. <i>The Management of Biodiversity</i> .....	4
2.2.5. <i>Weed Management</i> .....	4

## 1. NATIONAL VIEW

In all states, except the Northern Territory, Environment Protection Authorities have been established. The main reasons are the need for transparency, independence and the coordination of environmental issues. Different models exist. While EcOz sees the need for increased integration, transparency and independence, we are not advocating an EPA as there are several ways of satisfying the identified needs and have not investigated the pros and cons of EPAs compared with other models. It is also noted that most EPAs deal principally with pollution, environmental auditing etc, not necessarily with the environmental assessment process.

EcOz Environmental Services daily deals with environmental issues often working within the national, state and Territory environmental legislation. We deal with issues as diverse as managing aspects of the Environmental Management Plan of the proposed Christmas Island Space Base, preparing Environmental Impact Assessments for national companies, and providing advice to communities wished to develop integrated catchment plans. It is in this capacity, our experience of working with environmental legislation, that this submission is made.

Due to time constraints and compelling deadlines on a number of projects, the focus of this submission is on the need for integrated and complementary environmental legislation.

## 2. THE NORTHERN TERRITORY

### 2.1. Overview

Compared to other jurisdictions, Northern Territory environmental legislation is antiquated and not integrated or complementary, for example, different pieces of legislation deal with different aspects of the same issue. The fact that there is, legislatively, no way of dealing with environmental issues in a coordinated way leaves room for unsustainable environmental practices to occur.

### 2.2. Discussion

#### 2.2.1. Lack of integration

There are no statutory links between water, soil, mineral, native vegetation, weed or waste-discharge legislation, despite the logic of these being integrated. It should be noted that the Commonwealth has introduced a policy which requires that natural resource issues in a catchment or bioregional context for a range of issues. The lack of statutory links between the *Water Act* in particular and other pieces of Natural Resource Management (NRM) legislation are a flaw that allows development to take place without assessment of ecological sustainability.

A recent issue arose which caused some consternation to one of our clients, and is likely to arise again. Erosion and sediment control were identified as requiring attention in an EIS, and the EIS we prepared addressed them according to the Guidelines. After the EIS was completed and the Assessment Report was issued, a new requirement for the preparation of an erosion and sediment control plan was set, this time under the Soil Conservation Act, we believe. The requirements were different from those stated in the EIS, and were more onerous. This was an unacceptable and onerous process. Firstly, the erosion control aspects should have been addressed in the EIS, and second, the proponent would have had to expend more on developing the later erosion control plan when it should have been completed adequately in the first assessments in accordance with the EIS Guidelines. The issue was contested on behalf of the client and a compromise reached, but this should not have happened in the first place. The requirement to address erosion for the development should have been addressed once, and as comprehensively as was required in the first instance. Duplication should not have occurred.

Another issue which arose recently was that of review of Guidelines and EIS. In the process of environmental assessment, the steps are set out in a brochure issued by the department. The proponent presents a Notice of Intent, and a draft set of Guidelines is prepared and put out for public comment. The draft Guidelines are prepared within Government, and it should be assumed that at that stage all of Government has an opportunity to identify the relevant issues and provide the basis for Guideline preparation. In the recent case the draft Guidelines were prepared and issued for public and proponent comment. They also went to Government Departments for a second round of comment. In the second round of Government comments, several aspects were introduced which the proponent had no opportunity to challenge or refute prior to preparation of the Guidelines because they were simply incorporated into the final issued Guidelines. The proponent therefore had to challenge and refute the newly introduced components in the EIS, a much more expensive and unnecessary process, and one which made it appear that the proponent was overly defensive about an aspect of the project.

A third aspect of the integration of environmental assessments of projects is the duplication of process. The Assessment Report required that the proponent obtain a Land Clearing Permit under the *Planning Act* to clear more than two hectares of land. The Interim Development Control Order No 12 states, however, that the Order does not apply to land "in relation to which requirements in respect of the clearing of land are imposed under the *Mining Act*, the *Pastoral Land Act*, **another Act** or a regulation under an Act" (Schedule 1(c) ). As the proposal was assessed under the *Environmental Assessment Act*, and this Act addressed land clearing through the Guidelines for the EIS, the instructions received from Government on the proposal (the Assessment Report) seem to be in direct conflict with the wording of the IDCO. This also creates additional and unnecessary work and expense for the proponent, but one which the proponent is legally obliged to comply with.

#### 2.2.2. Transparency of Process

The stepwise EIS process is published by the Office of Environment & Heritage in a booklet. The process is also presented in the legislation as statutory time frames and limits for many stages. The legislation and the published booklet do not, however, present the actual process in a transparent manner, and at several points there can be significant delays in taking the process through. Proponents have challenged us on this because they have seen only the booklet and have not understood the

process. The process itself is also in need of revision, because some of the open-ended timeframes for Government process leave the proponent with no courses of action or appeal.

The process as published is reproduced in the appendix with our comments highlighted in the red caption balloons so that each issue can be seen in context. The process needs to be reconsidered in consultation with experts in the EIA field, including with practitioners such as ourselves.

### 2.2.3. The Management of Water

The NT has yet to adopt a formal procedure or develop policies associated with the management of water. The Northern Territory is still without a water allocation process which needs to operate in unison with natural resource management approaches and strategies to be effective. Allocation licensing, water use efficiency and water quality issues are managed in an ad hoc way. Irrigators are securing entitlements, land is being cleared and developments encouraged without any overarching regulations, regional strategy, catchment plan or community consultation. There are no statutory links between water legislation and other natural resource issues or management approaches.

The *Water Act* does not identify the need for integrated management. The cumulative impacts of small scale incremental development can be as severe as any large scale development which normally requires an Environmental Impact Statement (EIS). (An EIS can be demanded either under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*, if the proposed operation impacts on matters of national environmental significance or conservation of Australia's biodiversity, or under the NT *Environmental Assessment Act 1982*). The *Water Act* contains no reference to cumulative effects. There is a heavy reliance on the discretion and judgement of the Minister and the Controller of Water Resources that potentially makes the NT framework vulnerable to pressure from short-term or vested interests. The *Water Act* does not follow precedents of other States in having a clearly stated *object* requiring the minister and other responsible agents to aim towards in reaching decisions on the management of resource. Statutes in other Australian jurisdictions require that permits or licences should only be issued after certain matters have been taken into account and consultation procedures followed. In the NT the minister and the controller have wide discretion in issuing permits to construct works or to drill bores, and in issuing licences to harvest and use surface water or groundwater without having to attend to matters and without any consultation. Under the Act the minister can seek advice from a Water Resources Review Panel, or from Water Advisory Committees set up by the minister with minister's nominees, but this has rarely occurred. There are no statutory links with catchment planning groups or other government agencies, or requirements relating to expertise. The Water Resources Review Panel has been in existence for over 10 years but has only met approximately 3 times. This does not necessarily reflect the lack of issues but more that the issues are unknown, out of sight or not reported.

This, and the lack of NRM legislative support for sustainable and viable land and water use opens the very real risk of potential unsustainable developments and consequent expensive problems to fix in the future.

According to Neville (2001) the absence of statutory links between the Act's water allocation plans which can be prepared without community consultation and the mechanisms of integrated catchment planning is a serious weakness which robs the catchment planning processes of any authority.

The direction of the *Pastoral Lands Act* is now more orientated towards sustainable management of land resources, has provision for monitoring and defines processes to be followed in the event of unsustainable land management practices occurring on pastoral leases. The full application of these processes has not yet occurred within the knowledge of the authors.

#### 2.2.4. The Management of Biodiversity

In the Northern Territory the *Environment Assessment Act* is focused on assessing the environmental impact of development proposals. Extensive land clearing, however, is not automatically subject to environmental impact assessment. We have been involved in situations where on the one hand a small development with measurably minor or no impact, has been subjected to onerous environmental impact assessment procedures and on the other the clearance of thousands of hectares of natural vegetation requires no assessment.

#### 2.2.5. Weed Management

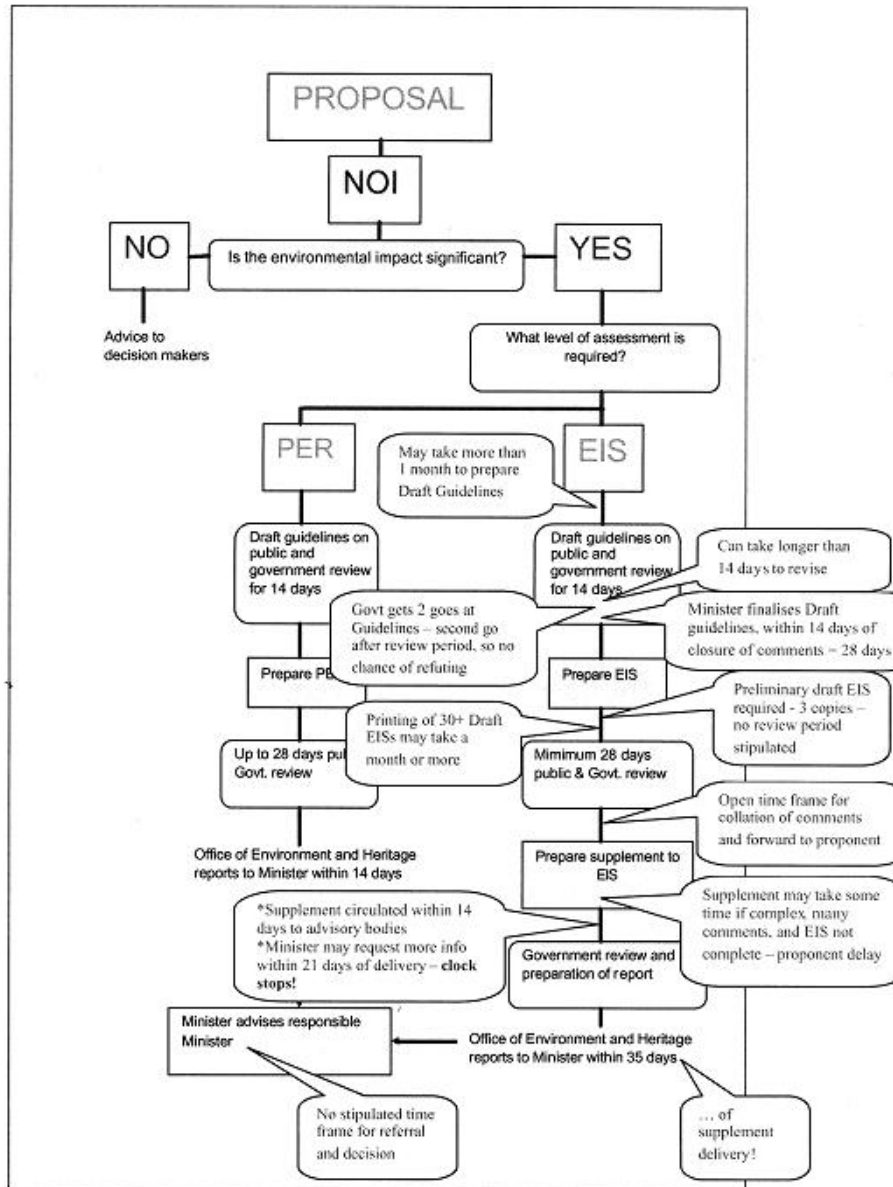
A principle of the Weeds Management Strategy 1996-2005 for the Northern Territory states that weed management is an integral component of all land management. However there appears to be no requirement under the *Weeds Management Act* for integrated management of different lands with respect to weeds management. An important issue for weeds management is the definition of the final state of the land after weed control. The objective of removing weeds, by default, is that landholders would prefer to see another vegetation type in their place. However, the replacement vegetation is rarely explicitly stated. Weed control methods often result in ground that is highly favourable to establishment by other weeds or the same species that was removed. There appears to be no overall responsibility in the Act for arbitrating and directing overall weed management objectives in the event of conflicting objectives of different landholders.

Signed

Penny van Oosterzee  
Managing Director

Noel Preece  
Director

2 April 2004



SUBMISSION NO. 22

**DARWIN PORT CORPORATION**

Mr Barry Berwick  
*Chief Executive*  
Received 5 April 2004



**Darwin Port Corporation**  
TDZ Admin Building, Berrimah NT  
Phone: +61 8 8922 0660  
Facsimile: +61 8 8922 0666  
E-Mail: [darwinport.dpa@nt.gov.au](mailto:darwinport.dpa@nt.gov.au)  
GPO Box 390 Darwin NT Australia 0801

Ref: DPC2004/4

Ms Delia Lawrie, MLA  
Sessional Committee on Environment and  
Sustainable Development  
GPO Box 3721  
DARWIN NT 0801

Dear Ms Lawrie

**RE: NORTHERN TERRITORY ENVIRONMENTAL PROTECTION AGENCY.**

Please find attached a submission from Darwin Port Corporation. The opinions contained in the Submission are those of the Corporation's Management, and have yet to be ratified by Darwin Port Corporation's Board of Directors. The Board is next due to meet on 31 May 2004.

Yours faithfully

BARRY BERWICK  
Chief Executive Officer

2 April 2004

**Sessional Committee on Environmental Sustainable Development  
Submission from Darwin Port Corporation**

(To be ratified by the Darwin Port Corporation Board)

The Darwin Port Corporation operate under the Darwin Port Corporation Act and is responsible for:

- The regulation, improvement, management, operation and control of and the promotion of trade within the Port;
- The movement of vessels in the Port;
- The provision and maintenance of port facilities; and
- Recreational, tourist and commercial activities.

In undertaking the above responsibilities, the Corporation is constantly involved in activities that impact on the environment. These activities are undertaken in such a manner as to minimise any detrimental impact on the environment, as the Corporation is acutely aware of its environmental responsibilities. The comments in this Submission refer mainly to marine environmental issues.

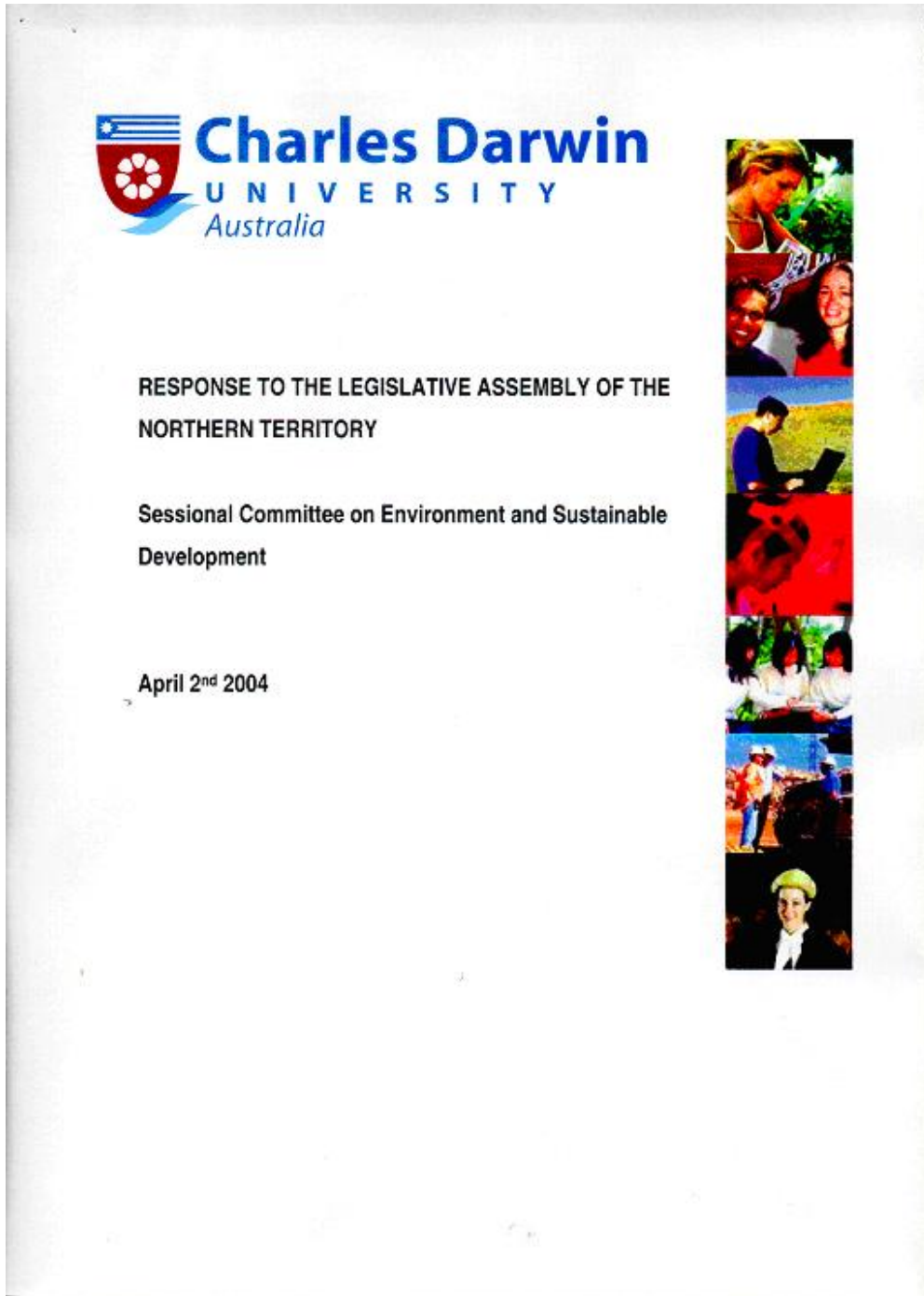
With policies and plans such as the “N.T. Marine and Coastal Management Policy” and “Darwin Harbour Regional Plan of Management” in place, the Corporation is of the opinion that the Government has a sufficient basis from which to monitor environmental protection. While the two examples given above are not specifically developed with environmental issues in mind, significant emphasis is placed on the sustainability of the environment.

Rather than introducing a further party onto the environmental scene, it would seem prudent to develop the areas of such policies and plans that deal with environmental issues, to provide an appropriate protection process. Other organisations such as the Environmental Centre for the NT, have been vigilant in monitoring issues which may adversely affect the environment, and are quick to voice their concerns to Government.

Given the sparse population of the Northern Territory and the fact that there is only limited development of the coastline outside Darwin Harbour, there seems little justification for the cost of setting up and running an Environmental Protection Agency in the Northern Territory.

SUBMISSION NO. 23

**CHARLES DARWIN UNIVERSITY**  
Professor Helen Garnett FTSE, FAICD  
*Vice Chancellor*  
Received 5 April 2004



**RESPONSE TO THE LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**  
Sessional Committee on Environment and Sustainable Development

Submission From  
Charles Darwin University

**Contact Person;**

Professor Helen Garnett

Vice Chancellor

Charles Darwin University

(Tel: 8946 6040, Fax: 8927 3480, email: [helen.garnett@cdu.edu.au](mailto:helen.garnett@cdu.edu.au))

**Appearing in Person before the Committee**

Officers speaking on behalf of the University do not seek to present to the Committee in person.

**Charles Darwin University -A Brief Profile**

The Charles Darwin University is a multi-sector institution servicing a wide range of education, research, training and community service needs for the local (Territory), national and international markets. The scope of research and education offerings from the University is broad and flexible, reflecting the dynamics of the community it services.

The University came into being in November 2003, formed by the amalgamation of the Northern Territory University and Centralian College. The Menzies School of Health is also attached to the new University, and will form a part of a new Institute of Advanced Study. In addition to health, the Institute will focus on Tropical and Desert Knowledge, Environmental Studies and Social Issues.

Charles Darwin University delivers approximately 85% of all higher education and VET content in the Northern Territory. The University also has a senior secondary college in Alice Springs, with approximately 250 students. The University has four main campuses: two in the Darwin area (Casuarina and Palmerston), one in Alice Springs, and one in Katherine. The Katherine campus encompasses three sites.

The Charles Darwin University is the largest R & D performer in the Territory and through rapid growth in the past few years is now responsible for almost 25% of all R & D performed in the Northern Territory.

Charles Darwin University is an example of a small university achieving excellent outcomes by adopting a structured and highly focused approach to research and research training. The University addresses issues that are of particular relevance to the Northern Territory including social, cultural, environmental and technological problems affecting development. Its research has a strong regional focus covering northern and central Australia and the western Pacific.

Charles Darwin University has clearly defined its areas of research strength and research priority, which are reviewed on an annual basis. These areas include tropical environmental science, tropical plant science, environmental remote sensing, tropical aquaculture, tropical health and international business. Research in these areas is underpinned by research programs that provide a focus for research among academics throughout the University and beyond. Its participation in Cooperative Research Centres and an Australian Research Council Key centre for tropical Wildlife Management also provides further opportunity for collaborative research and the development of postgraduate studies.

### **Consultation in Developing this Response**

The submission includes input from environmental scientists and other academic staff employed at the University.

## Arguments for and Against the Establishment of an Environmental Protection Agency for the Northern Territory

1. A comprehensive, visible and effective mechanism to strengthen environment protection administration in the Northern Territory would send a clear message to the Territory community and the Territory's broader stakeholders across Australia that the Territory economy has come of age. This would be achieved through demonstrating a strong Territory commitment to sustaining healthy environments; valued for their cultural and biological heritage, and valuable in the way they underpin economic prosperity.
2. Whilst the critical mass of industry and commerce in the Northern Territory has been small, with the greatest influence being the point source environmental impacts that are associated with the mining and resource industries, the economic projections now point to a secure future for development within the NT. It is the promise of this future economic development that underpins the need to demonstrably commit to sustainable environmental and economic development through a quadruple bottom line approach. The Northern Territory has the opportunity to learn from the mistakes in environmental management of the southeastern states. It has the opportunity to sustain a unique environment, a rich cultural diversity and a strong economic future. Any Environment protection - NT organisation ('EP-N7) would take a wider view of the values demanding protection than would similar agencies in other parts of the nation.
3. The question that immediately arises however is "Could the benefits of an EP-NT be achieved through means other than establishing a new agency?" In a perfect world characterised by unlimited resources a fully independent EP-NT governed by its own board, administering an Environment Protection Act that combines all aspects of environment protection, conservation, air and water quality, pollutants, waste and development legislation might be an attractive proposition. It is not clear how the Northern Territory could afford to establish and resource an Environment Protection Agency on the scale of other Australian states.
4. However, arguments of scale and resources do not remove the need for a responsible organisation, authority or Government Department to have responsibility and accountability for the protection of the environment in a manner that considers the effects on land, water, air and Indigenous heritage simultaneously.
5. Whilst an analysis of existing legislation is beyond the scope of this submission it is possible that a comprehensive review, gap analysis and integration of all related legislation on environment protection is the first step, rather than the creation of a new agency with insufficient resources to undertake its operations. There have been many recent new developments in the Territory, and with the advent of the railway and the new agreements for oil and gas, there will be many more new developments over the next decade. Surely this represents strong justification to revisit existing environment protection legislation and map it against our known future needs against a context of agreed basic principles.
6. For example, it is understood that the protection of the environment in relation to mining activities are split across two separate agencies within the NT Government. The Department of Infrastructure Planning and Environment are responsible for the monitoring and control of the impact of mining on the environment, but NOT responsible for the environmental implications of the mine operation within the

boundaries of the mine lease - that responsibility lies with the Department of Business Industry and Resource Development. Whilst on an operational level there may be a high level of cooperation between the departmental officers, how is a situation managed whereby the Chief Executives of the two agencies have to report against a two different sets of objectives and performance indicators? Incidents like the damage to nesting habitats of endangered species within the Mt Todd site, threats to the Edith River from acid drainage from the waste rock on the same site, and the contamination of a domestic water supply at Ranger, all illustrate the futility of segregating management issues across arbitrary boundaries.

7. As suggested above, could the management and control of such issues be better managed through the review and consolidation of all environment protection legislation rather than the creation of a new agency? Especially if such review included the development of a suite of regulatory mechanisms, standards and tools that could be uniformly applied across the Territory - the University does not have the detailed knowledge of NT legislation that is required to answer this question.
8. Whatever the answer to the question posed above, several issues remain critical to the development of sustainable, clean, green and prosperous futures. They are the need for environment protection mechanisms that are:
  - a. Transparent
  - b. Enforceable
  - c. Inclusive of stakeholder collaboration
  - d. Culturally responsible
  - e. Environmentally responsible
  - f. Founded on resource efficiency, and
  - g. Facilitative for knowledge and information sharing
9. There is a need to take a 'whole-of-environment' approach to setting baselines for the state and condition of the unique NT environments, including the pressures that are placed on that environment. Setting such a baseline will enable the identification of trends of 'whole-of-environment' condition over time and measures of environmental health mapped against economic development.
10. An EP -NT, if established, would have to be different, a model applicable to either Victoria or New South Wales would not work in the Territory. It is too resource intensive and there is not the capacity to support such an organisational and operational structure.
11. An EP - NT, if established, would embrace Indigenous issues and overall systems as a critical component of ecologically sustainable development.

**Options for the Structure of an Environment Protection Agency, taking Account of the Demographic, Geographic and Financial Context of the Northern Territory**

1. In view of the resource constraints that might impede the establishment of a new EP - NT, it may be a more productive approach to embrace a planning and reporting framework that addresses the quadruple bottom line of sustainable economic development. This framework might be modelled on, but much smaller than the model developed by the Queensland Government. The planning and reporting framework would provide a template against which decisions are made, resources are allocated and Government effort is focussed.
2. As proposed above, this approach to environment protection planning and reporting may be strengthened through consolidation of relevant legislation, such that responsibility, regulation and accountability for all aspects of environmental protection align with one single Agency or organisation reporting to one Minister. That Minister might have a single portfolio such that competing interests of a combined portfolio do not influence the environment portfolio.
3. Whatever structure is agreed upon the resultant 'Environment Protection - NT' must
  - a. Be fully resourced,
  - b. Be charged with the responsibility for administering an Environment Protection Act (or similar) that is linked to legislation governing development and planning, and
  - c. Be responsible for developing appropriate environmental policy that provides the framework for major infrastructure developments.
4. An 'Environment Protection - NT' committed to quadruple bottom line accountability would be strengthened by a legislative requirement to consult with the general community, business sector and government agencies and Indigenous Territorians about the approach and activities of its operations.
5. An 'Environment Protection - NT' if maintained as a department within Government, may benefit from the establishment of an Environment Protection Advisory Board. Membership of the Board may be on appointment of the Minister, or the Administrator, and should be inclusive of industry, commerce, government, Indigenous, community, legal and research sectors. Each member would be appointed on the basis of their ability to contribute their knowledge and experience and be required to operate in an *ad personum* capacity and not to represent their own, or a constituency's interests.
6. The 'Environment Protection - NT' should have a regulatory emphasis that targets polluting industries, but this should be coupled with developing new approaches to environmental management that can increase operational flexibility of industry without compromising regulated environmental standards. This would be achieved through the development of long term, cost effective waste minimisation measures as part of developmental planning. The critical mass of the existing Territory industry sector would need to be assessed against the major-projects that are already underway, or planned, for the mid to long term future. This analysis would inform the resource planning, and the areas of expertise or focus of any new planning and reporting framework.
7. 'Environment Protection - NT' in addition to its pre-development assessment obligation, would be committed to a strong audit and monitoring role. It would develop processes to provide for quick and effective response to evidence of

undesirable impacts and to capture lessons learned - positive and negative - for ongoing enhancement of its own capacity and the performance of developers.

8. 'Environment Protection - NT' should also have the capacity to advise and mentor small to medium size enterprise who do not have the resource capacity to access environmental advice from external expert sources.
9. The 'Environment Protection - NT' would administer any new consolidated legislation through the application of legislative and non-legislative mechanisms, policies or regulatory tools.

## Recommendation of a Particular Model and its staged Implementation

1. It is recommended that the Government of the Northern Territory consolidates all legislation that addresses environmental protection, including
  - a. Environmental planning
  - b. Pollution
  - c. Water quality
  - d. Land quality
  - e. Air quality
  - f. Eco-efficiency
  - g. Noise
  - h. Waste (avoidance and mitigation)
  - i. Radiation
2. It is recommended that responsibility for administering all aspects the environmental protection legislation reside with one agency of Government only.
3. It is recommended that the environment protection portfolio reports directly to a single Minister
4. The resources allocated to the agency should reflect the tasks required in priority areas of environment protection, and the mechanism for allocating funds should be sufficiently flexible to respond to critical incidents if and when they occur.
5. The research and development activities associated with a strengthened environment protection capability should form a Schedule to the Partnership Agreement between Charles Darwin University and the Northern Territory Government. This strategy would
  - a. Uphold the Government's commitment to innovation in environment protection
  - b. Through engendering strong collaboration between Government and University in the area of environmental protection, further consolidate the significant, but sometimes fragmented, capacity that already exists in the Northern Territory
  - c. Assist in expanding an area of research strength that has the capacity to lever Commonwealth investment for research into the Territory.
  - d. Ensure that experience of government and industry is captured and fed back to influence relevant teaching and research.

## Conclusion and recommendation

Establishing an Environment Protection Agency for the Northern Territory would send a strong message to the rest of Australia of the Territory's maturity and the new era of economic and social development. However, this may be a goal to aim for in the longer term, rather than the immediate to mid term.

It is an inescapable fact that the Territory's range of environmental risks and challenges, when coupled with the population size, vast areas of land and water, significant Indigenous population and industry profile, all point to the need to design a customised solution to environment protection. Transferring a model for an EPA developed elsewhere is unlikely to meet our needs.

It is our understanding that the Territory may not have the resources to establish and fund a full EPA of the conventional type. As in so many areas, the sparseness of our population and related resource constraints demands that we optimise the utility of existing institutions and personnel. Reducing ambiguity, duplication and competition through improved and integrated legislation can help make the "doing-more-with-less" mantra more than an exercise in smoke and mirrors. Resource constraints should not be allowed to inhibit a long term plan for improved environment protection characterised by its relevance to the Territory and by innovation and clear thinking.

We believe the goal for the Northern Territory in environment protection should be:

*An ongoing commitment to preserving sustainable futures that include the protection of a unique healthy environment coupled with development of economic prosperity for all sectors of the community and recognition and respect of the Indigenous cultural heritage that is such a significant facet of Territory life.*

It is recommended that the first step towards this ultimate goal may include:

- Consolidation and strengthening of existing legislation, and administer this legislation through a single agency
- Developing effective and enforceable tools to protect the environment
- Ensuring good policy exists that provides the framework for both advising planning applications for development, and the monitoring and control of existing entities
- Ensuring flexibility and responsiveness to address emerging or critical developments that impact on the environment.

## SUBMISSION NO. 24

**OFFICE OF THE INFORMATION COMMISSIONER NORTHERN TERRITORY**

Mr Peter Shoyer  
*Information Commissioner*  
Received 6 April 2004



9 Cavenagh Street, Darwin NT 0800  
GPO Box 3750, Darwin NT 0801  
Telephone: (08) 8999 1500  
FREECALL: 1800 005 610  
Facsimile: (08) 8981 3812  
Email: [infocomm@nt.gov.au](mailto:infocomm@nt.gov.au)  
Web: [www.infocomm.nt.gov.au](http://www.infocomm.nt.gov.au)

2 April 2004

Secretariat  
Sessional Committee on Environment and Sustainable Development  
Parliamentary Committees  
GPO Box 3721  
DARWIN NT 0801

Dear Sir/Madam,

**Sessional Committee on Environment and Sustainable Development**  
**Inquiry into efficacy of establishment of Environmental Protection Agency**

Thank you for the invitation to make a submission to this inquiry.

As you are aware, the Information Commissioner for the Northern Territory is the independent authority responsible for overseeing the Freedom of Information (FOI) and Privacy provisions of the *Information Act*. The Act enables people to access NT government information, including information about them. It also contains Privacy Principles that control how the NT government collects, manages, uses and discloses personal information. It is about government accountability and privacy protection of government records.

The focus of my comments will be on the benefits in terms of accountability and public participation that can accrue from having an independent Environmental Protection Agency (EPA), and the need to ensure that measures guaranteeing accountability and public participation are woven into the fabric of its establishing legislation.

**Benefits of establishing an Environmental Protection Agency**

Establishing an adequately-resourced, independent agency is perhaps the best way to ensure community recognition of the priority given to environmental protection. An EPA can be seen as a driving force for environmental protection. This is not to say that it should be seen as promoting protection of the environment "at all costs". Its aim should

be to find an appropriate balance between environmental concerns and other community and private interests.

Having the body responsible for environmental protection as a part of a larger departmental structure can lead to apparent, and in some cases real, dilution of focus on environmental issues. There is a risk that both the organisations that are regulated and members of the community will view the inclusion in a broader structure as indicating a lower priority for environmental protection. If this perception grows, there is the potential for environmental protection to be seen as a low priority or 'low risk' area for businesses, making the job of the regulator even harder.

Creation of an independent agency sends a clear message to the regulators, to those who are regulated, and to the community, about the goals of the government and the agency. It also makes the job of assessing the performance of the agency easier because its goals can be developed and pursued without the dilution of purpose that can occur as part of a larger organisation.

### **Importance of including accountability and public participation in the statutory framework**

I would certainly favour including an EPA as a public sector organisation within the accountability framework set out in the *Information Act*. It is important that the general rights in the Act are available to members of the community.

However, it is vital that reliance is not simply placed on those general measures. The best way to approach questions of accountability and public participation is at the time of framing the legislation that creates an EPA.

Environmental protection is an area that has grown in significance and public concern in recent years. Legislation that establishes an EPA should provide for as much openness and public participation in processes as is reasonably possible. Issues to be considered may include the extent to which:

- the agency should consult members of the public in relation to its functions;
- members of the public and representatives of community groups can become involved at the management level, for example, on the board of the agency, or relevant subcommittees;
- members of the public and representatives of community groups can become involved in an advisory or technical capacity;
- provision for public notification and public hearings/proceedings can be appropriately included in relation to the functions of the agency;
- the agency should be required to publicly report on its functions, both generally and in specific cases.

In terms of public participation, it is worth considering to what extent, if any, members of the public should be able to take action to protect the environment if they feel the EPA should be acting but is not. For example, should members of the community or community groups be able to commence prosecutions for environmental offences or

take action to seek declarations or injunctions in respect of breaches of environmental laws? In that regard, should traditional notions requiring a litigant to show 'standing' before they can proceed in a court be altered or removed in relation to environmental offences?

For example, s.507 of the *Environmental Protection Act 1994* (Qld) provides that a person can bring proceedings for an order to remedy or restrain the commission of a development offence. They may do so whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence. The underlying rationale is that environmental protection is for the benefit of the community as a whole, and therefore any member of the community should be able to take steps to enforce it.

### **A starting point - Inclusion in objects clause**

A number of jurisdictions in Australia have emphasised openness and public participation in the constituent legislation of their environmental protection agencies, principally in the objects clauses of the applicable Acts.

For example, the South Australian *Environment Protection Act 1993* includes amongst its objects (s. 10(1)(b)(B)):

- (vii) *to Provide for monitoring and reporting on environmental quality on a regular basis to ensure compliance with statutory requirements and the maintenance of a record of trends in environmental quality,. and*
- (viii) *to provide for reporting on the state of the environment on a periodic basis,. and*
- (ix) *to promote-*
  - (A) *industry and community education and involvement in decisions about the protection, restoration and enhancement of the environment,. and*
  - (B) *disclosure of, and public access to, information about significant environmental incidents and hazards.*

Section 4 of the *Environmental Protection Act 1994* (Qld) describes a cyclical program by which the objects of the Act are to be achieved. This includes Phase 4, "ensuring accountability of environmental strategies". Section 4(7) states:

- (7) *Phase 4 is achieved by-*
  - (a) *reviewing the results of human activities on the environment,- and*
  - (b) *evaluating the efficiency and effectiveness of environmental strategies, and*
  - (c) *reporting publicly on the state of the environment.*

The Queensland legislation also emphasises public participation in government (s.6):

### ***Community involvement in administration of Act***

*This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres*

*Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.*

The Victorian *Environment Protection Act 1970* contains a set of principles, including the "Principle of Accountability":

- (1) *The aspirations of the people of Victoria for environmental quality should drive environmental improvement.*
- (2) *Members of the public should therefore be given-*
  - (a) *access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues,.*
  - (b) *opportunities to participate in policy and program development.*

Inclusion of clearly spelled out objects of accountability and public participation would be a base on which to build specific provisions setting out the mechanisms for achieving those objects.

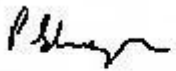
### **Conclusion**

Creation of an adequately-resourced, independent EPA would send a clear signal to the community, including organisations subject to regulation, that environmental protection is a significant priority.

Issues of accountability and public participation should be considered at the outset, and incorporated in the establishing legislation of any EPA.

I do not seek to appear before the Committee in relation to this inquiry. However, I am happy to provide the Committee with any further information or assistance that my Office can give.

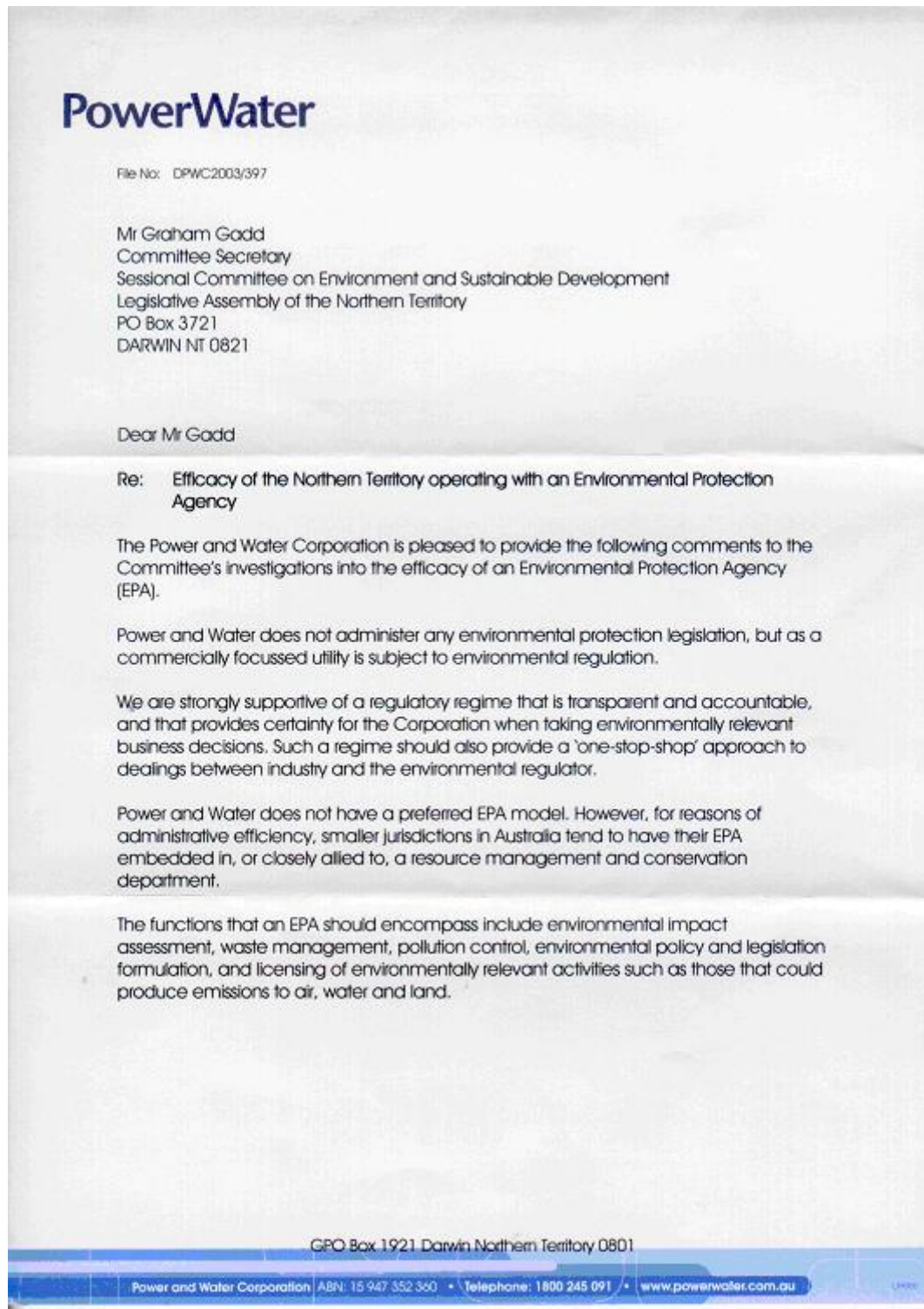
Yours sincerely



Peter Shoyer  
Information Commissioner

## SUBMISSION NO. 25

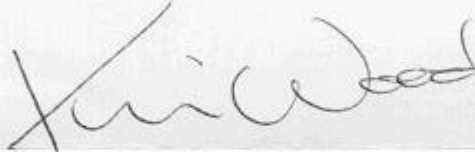
**POWER WATER**  
Mr Kim Wood  
*Managing Director*  
Received 7 April 2004



Resource management functions such as heritage conservation and coastal zone planning and management may better reside in an allied department, and litter management could be devolved to local government bodies. This would provide a body with a greater focus on environmental protection.

Please contact Power and Water's Manager Environmental Services, Randall Scott on 8924 5912 if you would like to discuss these comments further.

Yours sincerely



Kim Wood  
Managing Director

31 March 2004

## SUBMISSION NO. 26

**AMATEUR FISHERMEN'S ASSOCIATION OF THE NT INC.**

Mr John Harrison  
Executive Director  
Received 8 April 2004



**AMATEUR FISHERMEN'S ASSOCIATION  
OF THE NT Inc.**

PO Box 40694  
Casuarina NT 0811  
ABN: 47 665 738 318  
Phone: 08 89456455  
Facsimile: 08 89456055  
Email: [afant@afant.com.au](mailto:afant@afant.com.au)  
Website: [www.afant.com.au](http://www.afant.com.au)

Our mission: To represent recreational fishing in the NT and ensure the quality of our sport.

Ms Delia Lawrie MLA  
Chair  
Sessional Committee on Environment & Sustainable Development  
Via email

Dear Ms Lawrie

Although overdue we would appreciate the Committee considering our brief comments on the establishment of an Environmental Protection Authority (EPA) for the NT. We support the establishment of an EPA.

An adequately resourced EPA office should be established. This, the Secretariat, should consist of technical and scientific based experts who are charged with protection of air and water quality, and control of pollution, waste, noise and radiation.

The EPA must be independent and as a statutory body report direct to the Legislative Assembly via the Environment Minister. Political interference should not be tolerated and if needed a clear reporting path that ensures this should be introduced.

Given the financial constraints of the NT it is our recommendation that a Board of Directors be established that is comprised of 4 non-executive directors plus the Executive Director or General Manager of the secretariat. The 4 Board members should be selected based on their specialist knowledge with the board being expertise based rather than political or advocacy based. An independent Chair of the Board should be appointed. The total number of Board members should not exceed 6.

It is essential that the processes of the EPA are totally transparent and not influenced by political priorities or industry lobbying. A suite of policies and regulatory tools will need to be developed and this could be done through the establishment of an Advisory Group or Technical Working Group.

Yours sincerely  
John Harrison  
EXECUTIVE DIRECTOR

## SUBMISSION NO. 27

**NORTHERN TERRITORY POLICE, FIRE AND EMERGENCY SERVICES**

Ms Pauline Benaim  
*Commissioner's Office*  
Received 8 April 2004

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NORTHERN TERRITORY POLICE FIRE AND EMERGENCY SERVICE WRITTEN  
SUBMISSION TO THE SESSIONAL COMMITTEE ON ENVIRONMENT AND  
SUSTAINABLE DEVELOPMENT

**(a) Arguments for and against the establishment of an Environmental Protection Agency for the Northern Territory**

Most other jurisdictions in Australia have an established Environmental Protection Agency. It is clear in our jurisdiction there is an identified need to provide a framework that properly encapsulates the relevant functions of such a body, namely the prevention, education and enforcement roles as they relate to pollution and site contamination, whether it be by way of deliberate disposal or an accidental spillage.

The Northern Territory legislative framework was expanded in 1996 with the enactment of the Environmental Offences & Penalties Act. The Act dovetails into the Waste Management & Pollution Control Act. To date no regulations have been prescribed pursuant to Section 10 of the Environmental Offences & Penalties Act and very few, if any, prosecutions have been commenced pursuant to the offence provisions. Perhaps with the establishment of an Environmental Protection Agency regular monitoring and review of the legislative framework would be possible to ensure that it is meeting the desired objectives. For example, do the defence provisions contained at Section 84 of the Waste Management & Pollution Control Act require tightening so as to enable a successful prosecution to be mounted?

There were two recent instances, both of which occurred in Central Australia on the Tanami Highway, where the response to, and subsequent investigation of site contamination appear to the lay observer to have been less than satisfactory. The first was the cyanide spill of a few years ago and the more recent was the hydrochloric acid spill.

In fairness to the responding agency, both of these instances probably turned out the way they did due to a combination of factors, those factors being the lack of skills/training/expertise by the responding agency to deal with the investigation and secondly, the lack of a proper legislative framework to enable that agency to progress the allegations in a formal sense. This combination of factors led to no formal action being taken against those persons alleged responsible, which in turn leads to a mindset in the wider community which undermines the necessary deterrence of subsequent environmental harm by other parties.

In summary, although it is envisaged that police will retain primacy for the investigation of criminal offences such as Chemical, Biological and Radioactive incidents (CBR), there is a legitimate need for a properly resourced agency that can adequately deal with environmental offences more generally, that relate to illegal disposal, improper transport/storage or conduct that has the potential to threaten community health, damage the environment or otherwise detract from the amenity of life for Territorians.

**(b) Option for the structure of an Environmental Protection Agency, taking account the demographic, geographic and financial context of the Northern Territory**

Organisationally, there is no reason to make comment, or take a view as to the structure of any proposed Environmental Protection Agency. Suffice to say that consistent with the above observations at paragraph a), any structure must be conducive to removing the identified impediments, in that it must provide a framework that satisfies the roles and functions required and is properly resourced with personnel who have the capacity and expertise to competently conduct necessary investigations.

That said, looking at other models in other jurisdictions the Environmental Protection Agency usually sits under the wider umbrella of departments such as the New South Wales Department of Environment & Conservation. Perhaps for Northern Territory purposes the most suitable position would be to sit under the Department of Infrastructure, Planning & Environment (DIPE) where Environment & Heritage now sits. However detailed comment on such a proposal would best come from someone with a more detailed understanding of the DIPE organisational structure as it presently stands and the suitability of such a proposal.

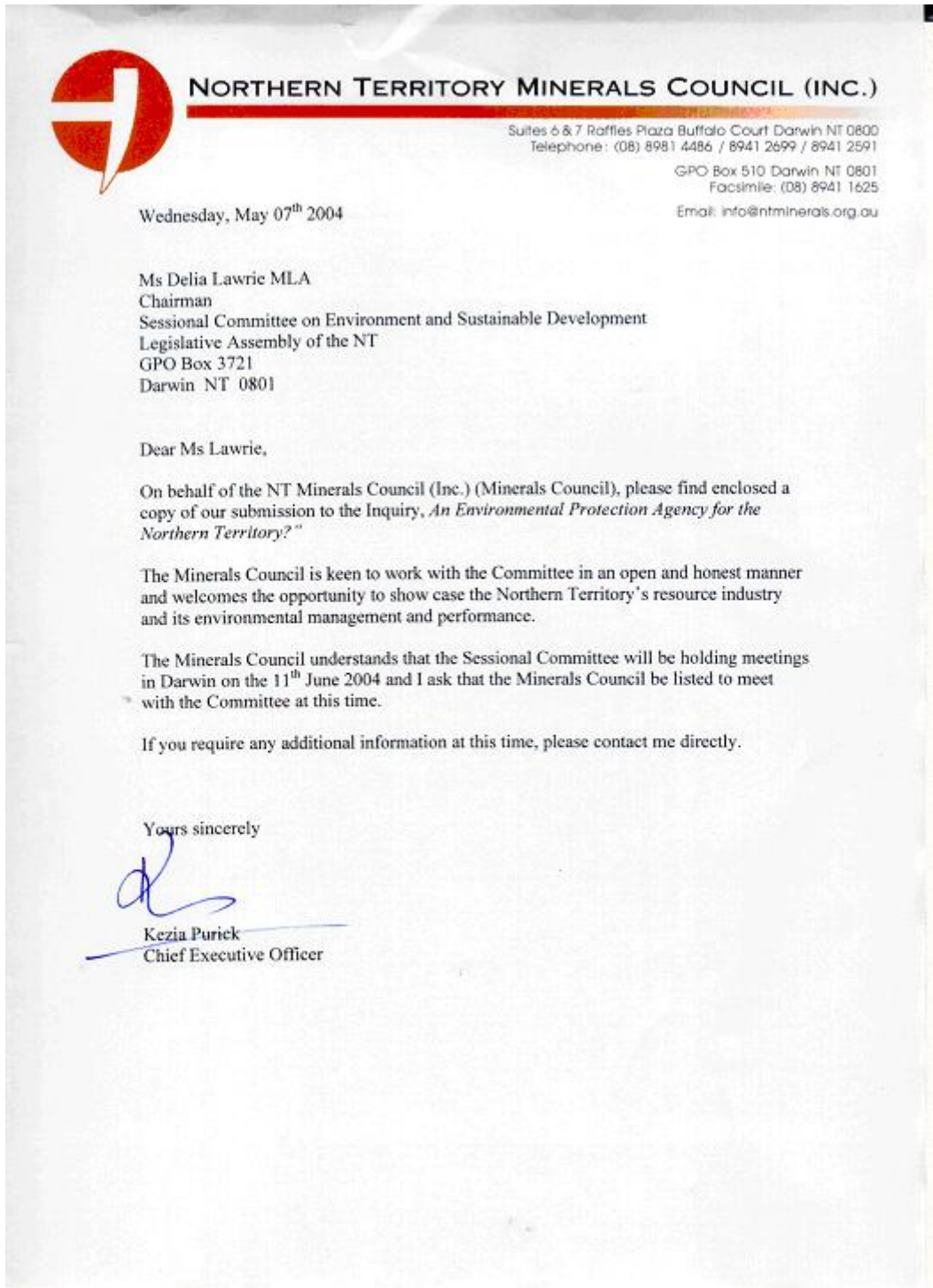
**(c) If a particular model is recommended, options for its staged introduction**

Organisationally, there is no reason to make comment, or take a view as to a particular model, but again consistent with the above observations priority should be given to the engagement of suitable personnel with investigative expertise in addition to scientific expertise to conduct timely, effective investigations into incidents.

## SUBMISSION NO. 28

**NORTHERN TERRITORY MINERALS COUNCIL (INC.)**

Ms Kezia Purick  
*Chief Executive Officer*  
Received 7 May 2004



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY  
SESSIONAL COMMITTEE ON ENVIRONMENT AND SUSTAINABLE  
DEVELOPMENT

INQUIRY:

AN ENVIRONMENTAL PROTECTION AGENCY FOR THE NORTHERN  
TERRITORY

SUBMISSION

BY THE

NORTHERN TERRITORY MINERALS COUNCIL (INC.)



Northern Territory Minerals Council (Inc.)

Suites 6&7 Raffles Plaza  
1 Buffalo Court DARWIN NT 0801

GPO Box 510 DARWIN NT 0801

Ph: (08) 8981 4486

Fx: (08) 8941 1625

Email: [info@ntminerals.org.au](mailto:info@ntminerals.org.au)

## **CONTENTS**

### Executive Summary and Recommendations

#### 1. Introduction

- 1.1 About the Northern Territory Minerals Council (Inc.)
- 1.2 Profile of the Resource Industry in the Northern Territory.
- 1.3 Key Issues for the Resource Industry in the Northern Territory

#### 2. Current Regulatory Requirements for Mining

- 2.1 Statutory Requirements
- 2.2 Non-statutory commitments by Industry
- 2.3 Role of the Commonwealth Government

#### 3. Current Northern Territory Government Arrangements for Environmental Assessment

#### 4. In Support of Current Legislative Regime

#### 5. Conclusion

#### 6. Appendices

- 6.1 Chart of Typical Gold Mining Operation and Tailings Storage Facility
- 6.2 Map of Territory Projects and Prospects
- 6.3 The Minerals Industry's Social Contribution to the Northern Territory

#### 6.4 EIS Approval Process in Figure Format

#### 7. References

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

The Northern Territory Minerals Council (Inc.) (Minerals Council) believes that the Sessional Committee on Environment and Sustainable Development Inquiry into "*An Environmental Protection Agency for the Northern Territory*" provides an important opportunity for the resource industry to demonstrate its solid record in environmental management and performance. While the current system for environmental assessment in the Northern Territory for the resource industry is effective and may even lead the country in regulation and management, the Inquiry provides an opportunity to examine whether better outcomes for the minerals industry and environment would be achieved through changes in current administrative arrangements, as they apply to the industry.

The principles against which improved outcomes should be judged include:

- Certainty of regulatory regime for investors;
- Efficiency, including streamlined assessment and approvals processes;
- Cost effectiveness;
- Timeliness;
- Transparency;
- Objective and fair; and,
- Seamless integration of regulatory process.

In assessing the current system against these principles, the Minerals Council believes that major changes to the current arrangements cannot be justified, and indeed, could reduce the current efficiencies, at least in the short term. Of concern to the Territory as a whole should be the impact regulatory uncertainty brought about by major structural administrative change would have on an already difficult economic investment climate.

Having said that, the Minerals Council acknowledges that there are interests in the Territory that could accommodate change in arrangements for environmental regulation and administrative support from Government.

The resource industry understands the changing social and political environment in which it operates and responds to changing community expectations. Establishing a new Government agency will not address these issues or lead to improvements in the Government's capacity to manage industry's short and long-term environmental performance. Having said that, the Minerals Council will work with Government and others on the problems that are perceived and with an open mind come up with the best solutions for all concerned.

In preparing this submission, the Minerals Council is cognisant of the various interest groups' views on the subject matter and believes that this submission will contribute to an improved understanding of the resource industry and its environmental management and performance based on fact and evidence.

The Minerals Council believes that the current system of environmental assessment and management by Government for the resource industry is objective, fair and open to scrutiny and is relevant for contemporary operations. The Minerals Council does not complacently assert, however, that there is no room for improvement in environmental assessment or performance by Government or industry. The resource industry is engaged in a process of continuous improvement and has a significant programme of research and development, which contributes to an improved knowledge base. It is believed that regulators too are continuously developing and refining their procedures and perhaps there is scope to do more with the current Government structure.

The issue for the Sessional Committee, the Minerals Council submits, is not to assess the merits or otherwise of a new environmental protection agency to avoid perceived problems of Government's regulation or industry's performance, but rather, the challenge is to consider whether anything new needs to be initiated and/or improvements made, which achieve the outcome of better environmental protection and management for the Northern Territory.

In proposing the following recommendations, the Minerals Council believes that, if adopted, they will deliver sound outcomes for all parties and the future of the Northern Territory. The Minerals Council would be a stakeholder in the consultation process and seek to have the views of its members included in the draft report to the Parliament.

1. Hold a Government, Industry and relevant community groups forum to draw out the problem" that drives the desire by some to create an environmental protection agency that is different to the current system. This initial forum would identify the key stakeholders and secure agreement on a list of issues/problems that need to be addressed.

The Forum would:

- obtain from stakeholders their particular perceived root causes of these problems/issues and group them into administrative, technical, regulatory, political, social, cultural and research.
  - ask stakeholders to provide possible areas for addressing each root cause individually and/or collectively.
2. Form a panel of experts from within and outside Government (including key stakeholders representatives) to add to the list of perceived causes and to report to the Sessional Committee on a range of options that would address the list of concerns/ issues including the for and against arguments for each treatment option.
3. Distribute the expert panel's report to stakeholders for comment.
4. Review stakeholder feedback and with the assistance from the expert panel, prepare a detailed report on the areas of concern with a final report being prepared and viewed by stakeholders prior to being tabled in Parliament.

## **1. INTRODUCTION**

### **1.1 About the NT Minerals Council (Inc.)**

The Minerals Council is an independent, industry group incorporated in 1955, under the NT Association Act, to promote and represent the views of its members, which includes mineral exploration, mining, quarrying, extractive, petroleum, service, supply and specialist consultant companies and businesses.

Its business statement is, "*To represent the Northern Territory minerals, petroleum and allied industries in the promotion of a safe, profitable and environmentally responsible industry that is internationally competitive and attuned to community expectations*".

The Minerals Council's objectives are articulated in its Constitution, Rules and regulations and include the following:

- To represent and promote the exploration, mining, minerals processing and petroleum industries in the Northern Territory and to represent the members of the Minerals Council in all or any matter which affect them generally, or which affect a sub-group of members;
- To promote public awareness of the industry's role in society and to ensure educators, students, community groups and the general public have a balanced and informed understanding of the Territory minerals and petroleum industry;
- To assess any legislative measures and to petition governments, parliamentarians, legislative and administrative bodies on any matter affecting the interests of the Minerals Council and its members; and,
- To recognise and encourage corporate responsibility of members towards the Northern Territory.

Members of the Minerals Council include all major operators in the exploration, mining and petroleum development fields in addition. Additionally members include major pipeline operators, mine contractors, heavy earth moving companies and a wide array of service and supply businesses.

Members are responsible for 95 per cent of Territory international merchandise exports with the prospects of improvement in this figure from the development of the liquefied natural gas facility near Darwin and the expansion of the alumina refinery at Nhulunbuy

Operations of member companies are typical of the Australian minerals industry and include, open cut and underground operations and extraction of minerals through various chemical processes.

**Refer to Appendix One - Typical Gold Mining Operation and Tailings Storage Facility**

## 1.2 Profile of the Resource Industry in the NT

Various forms of mining and mineral extraction have taken place in the Northern Territory from the early stages of its history as an administrative entity. Mining is one of the very few types of economic enterprise that has proved viable in the Territory. Often initial exciting discoveries of minerals did not prove worthwhile in the long term. Difficulties with the environment, access, lack of infrastructure and disputes with land owners all posed problems, however, in the end, the minerals industry did succeed and has had a long and successful career.

The Territory is rich in a wide range of mineral resources. Most of it belongs to the huge shield zone of Western Australia, which is a particularly ancient and stable geological area. During the era in which the landscape as is known today was being formed, many of the Territory's present minerals came into being. These include antimony, arsenic, copper, gold, iron, lead, manganese, silver, tantalite, tin, uranium, wolfram and zinc. They are found in various parts of the Territory, but there are noticeable concentrations in areas around the towns of Pine Creek and Tennant Creek. In addition, in the sedimentary strata of the Amadeus Basin, in the Territory's southwest corner has oil and gas reserves.

The minerals and petroleum industry leads the Territory's economic growth from historical times to the present contributed approximately 22.2 per cent to Gross State Product in the 2001/2002 year. Although classified as manufacturing, alumina production is estimated to account for a further 2 per cent of Gross State Product. The nominal value of mineral and energy production and processing is estimated to be \$1.4 billion in 2002/2003.

The Territory's most significant known metallic and non-metallic mineral resources are:

- Bauxite - the third largest bauxite mine in Australia located near to Nhulunbuy on the Gove Peninsula;
- Gold - major operating mines in the Tanami region and a smaller operation at Tennant Creek;
- Manganese - a world class operation on Groote Eylandt;
- Zinc, Lead and Silver - one of the world's largest known ore bodies at McArthur River near Borroloola;
- Garnet Sands and Vermiculite north of Alice Springs; and,
- Lead, Cobalt, Copper, Nickel, Silver - a major polymetallic deposit near Batchelor.

The value of metallic and non-metallic mineral production in the Territory is underpinned by the world-class deposits of bauxite/alumina, manganese and zinc, lead and silver. The three mines that produce the minerals accounted for almost 75 per cent of the Territory's total value of metallic and non-metallic mineral production in the 2001/2002 year.

There are major expansion programmes proposed for the McArthur River Mine and the Alcan Gove projects, however, final commercial commitment is yet to occur in respect to the expansion plans.

## Refer to Appendix Two - Map of Territory Projects and Prospects

The significant known energy resources in the Territory are:

- Uranium - deposits at Ranger, Jabiluka and Koongarra;
- Natural Gas - onshore in the Amadeus Basin at Palm Valley and Mereenie;
- Natural Gas and Condensate - offshore in the Bonaparte Basin at Greater Sunrise, Evans Shoal, Petrel and Crux;
- Oil - onshore at Mereenie;
- Oil - offshore in the Timor Sea at Jabiru, Challis/Cassini and Laminaria-Corallina.

Significant resources in the Timor Sea Petroleum Development Area adjacent to the Territory (half of the value of production is now attributed to the Territory) include:

- Natural Gas and Condensate - Bayu Undan and 20 per cent of the Greater Sunrise; and,
- Oil - Current production at Elang/ Kakatua/ Kakatua North.

Pipelines servicing the minerals and petroleum industry are also an important contributor to the economic development of the Territory. The major pipeline in the Territory is the 1500 kilometre Amadeus to Darwin pipeline, operated by NT Gas Pty Ltd. Spur lines include the line to the McArthur River Mine near Borroloola.

Proposed pipelines include the Port Keats to the Gove Peninsula pipeline or as it is referred to, the Trans Territory Pipeline.

Mining is a capital-intensive industry with low employment relative to other industry sectors. Direct employment in the Territory is around 3,000 with an in direct employment ratio of 2: 1.

Two of the major projects operate on a fly-in fly-out system exclusively with other major projects operating on a combination of residential township living and some fly-in-fly-out support.

The resource sector also makes large direct contributions to the NT Government revenue through mineral royalties, direct taxes and indirect taxes and lease payments.

Significant contribution is provided by the resource industry to the development of the Territory's infrastructure - indirectly through taxation revenue to Government and directly through its development of new mines and associated facilities. The industry is responsible for many of the Territory's townships, past and present. Townships of Batchelor, Pine Creek, Tennant Creek, Alyangula, Jabiru and Nhulunbuy owe their existence to the development of mineral deposits. Additionally, the resource industry currently contributes substantially to the communities of Borroloola and Alice Springs and previously to Katherine.

Through the development of mineral projects, the industry has provided airports, road services and ports throughout the Territory. Social infrastructure provided by the Territory resource industry is often the only infrastructure built in remote areas. The development of mines in these remote areas is often the catalyst for much more extensive economic development in remote regions, including another big money spinner and employer - tourism.

Communities in remote regions of the Territory owe much of their quality of life to the provisions of facilities by mining companies for use in recreational pursuits. Boat ramps, ovals, community halls, sporting fields, clubhouses, racetracks and swimming facilities are some of the facilities provided by industry across the Territory.

Procurement of goods and services by the resource industry is a major economic driver for the Territory economy. Each year, the industry spends approximately \$300 million in the Territory, which does not include salaries and wages to employees and indirect employees.

**Refer to Appendix Three - The Minerals Industry's Social Contribution to the Northern Territory**

### 1.3 Key Issues for the Resource Industry in the Northern Territory

The Territory minerals and petroleum industry is diverse and export oriented, technologically advanced, capital intensive and high risk-high reward characterised. Arguably, it is the Territory's most global industry - deeply externally integrated and heavily reliant upon international markets.

Minerals are located in diverse geographical settings. The continued development and profitability of the Territory requires access to land and coastlines for exploration and development. Access to assess is fundamental to the industry and impediments to access can have severe detrimental impact not only to the resource industry, but also to all other industry in the Territory. The minerals industry is the major contributor to the economy yet more mines are closing than opening and exploration expenditure is decreasing year by year. Government policy or change in policy has had a significant impact on the probabilities of discovery and the cost of discovery. Mineral exploration expenditure dropped from approximately \$98 million in 1991 to \$48 million in the 2001/2002 -year. And of the \$48 million, under half is spent on greenfields exploration. In the last five years nine mines have closed and only one new deposit opened. Development of the Jabiluka orebody is uncertain and the Koongarra orebody is in a similar position. Two new mines proposed for the Batchelor region located 1 00 kilometres south of Darwin have been delayed, one indefinitely. The last world class project discovered in the Territory was the Jabiluka deposit in 1972 - yet to be developed.

The search for minerals over wide areas of land is an expensive and high-risk activity with a low probability of success. Each passing year, with the growing burden of the cost of doing business in the resource industry and the likelihood of success - makes the chances of a worthwhile discovery more difficult.

In addition to the over-riding issue of access, the minerals industry has experienced significant changes in its structure over the last five to ten years with rationalisation accelerating over the past five years, as a consequence of global consolidation of the resource sector. The global majors have systematically absorbed many of the middle ranking companies around the world including most of the Australian (and Territory) mid-tier companies.

The resultant corporate representation in the Territory minerals industry is presently:

- Five global majors;
- One to two mid-tier companies; and,
- About a dozen junior explorers and smaller producers.

The main implication for the minerals industry is that much of the decision making of a corporate nature occurs at an overseas location. There is no overriding imperative to explore in the Territory, or indeed Australia, and while the perspective of a large global company may well coincide with the interests of the Territory, this may not be the case always.

Securing of capital does not appear to present an issue for major companies as their finance is generally sourced internally, however, juniors tend to source their funds from the speculative end of the equities market. Raising of capital is an issue always for juniors and they need to offer quality tenement portfolios and superior management strategies to succeed in raising equity funding.

The critical issue for the resource industry in the Territory, however, is that of access to land for exploration and mineral and petroleum development. Access to a significant part of the Territory is subject to the regime set out in the Commonwealth's Aboriginal Land Rights (NT) Act 1976 (ALRA). Additionally, the resource industry is subject to the workings of the Commonwealth's Native Title Act 1994 for the balance of the Territory's landmass. Both pieces of legislation are complex as they are complicated with the former being the subject of many and various reviews of its 25 year history. Work continues with the ALRA such that there are improvements and positive outcomes for all stakeholders.

## **2. CURRENT REGULATORY REQUIREMENTS FOR MINING**

### **2.1 Statutory Requirements**

The main statutory requirements for the minerals industry in the area of environmental assessment and regulation in the Territory are as follows.

#### Mining Management Act and Regulations

The Mining Management Act (2001) came into force on 1 January 2002 and applies to all mining, extractive, quarries and exploration licence areas in the Territory. Compliance with this legislation is usually through an ongoing integrated approach to all business management activities on a project or site including environment, health and safety. Authorisations to operate are issued to companies in accordance with the requirements of this Act.

#### Environmental Assessment Act (1982)

The Environmental Assessment Act (1982) and the Environmental; Assessment Administrative Procedures (1984) under which the act is implemented, form the basis of the Territory environmental; assessment processes. The primary purpose of the assessment process is to provide for appropriate examination of proposed new projects and significant changes to existing projects that may cause significant environmental impact.

#### Water Act (1992)

A water extraction licence under the provisions of the Water Act applies to the use of groundwater as a water supply. The licence requires regular reporting of aquifer status.

A wastewater discharge licence is granted under the provisions of the Act usually after the declaration of a beneficial use of the recipient water body.

#### Waste Management and Pollution Control Act (1999)

The Waste Management and Pollution Control Act came into force on 1st February 1999. While the Act does not apply to mineral leases and exploration tenements, it covers all associated activities of the minerals industry off-lease.

#### Environmental Offences and Penalties Act (1996)

This Act establishes penalties for certain offences relating to the protection of the environment, and for related purposes.

Other legislation of note covering areas of the industry includes petroleum, pipelines, dangerous goods, weeds, heritage, sacred sites and heritage, parks and wildlife and conservation.

## 2.2 Non-Statutory Commitments by Industry

The minerals industry in the Territory's approach to environmental management is governed by an overriding global focus on sustainability, which includes continuous improvement of performance, strengthening relationships and partnerships and demonstrating integrity and commitment.

In the Territory, many of the resident companies have adopted a number of initiatives to support the global sustainability commitment. These include:

- All major operators have environmental health and safety policies that advocates excellence in environmental performance through continuous improvement of awareness, understanding and performance. These policies frequently form the cornerstone of a company's management system
- Certification to ISO 14001, an internationally recognised standard for environmental management systems. The Ranger and GEMCO mines have achieved this status and Alcan Gove is currently awaiting official notification following a successful certification audit. Achieving ISO 14001 usually takes up to three years of solid work and commitment by a company.
- Companies are signatories to the Australian Government's Greenhouse Challenge Programme, which involves submission of annual reports to the Australian Greenhouse office on performance against emission targets.
- Annual public reporting on the environmental, health and safety performance of operations.
- All major operators in the Territory are signatories to the Minerals Industry Code for Environmental management. Key components of the Code include a requirement to publish an environmental report each year, to report annually on compliance to the Code, and to conduct three-yearly independent audits on compliance to the Code.
- All Territory operators and explorers subscribe to the NT Minerals Council (Inc.) Code of Conduct for Mineral Explorers in the Northern Territory of Australia. This Code was prepared to promote best practice in the Territory by exploration companies regardless of size of operation. In developing the Code, full and proper discussions occurred with the Government's Minerals and Energy Group, the Office of Environment and Heritage and the NT Cattleman's Association
- For the past five years, the Minerals Council has organised an annual environmental workshop for industry, Government and non-government organisations. The workshop is the pre-eminent event for face-to-face exchange of information on environmental management in the minerals industry in the Territory. An indication of the esteem, in which the workshop is held by Government is the fact that, typically, around 25% of delegates are from the NT Government, Commonwealth agencies and research institutions. Government also provides speakers.
- All companies have strong community partnerships and are a component of the expectations and requirements for environmental management. As a part of the community, regional mining operations understand the need for communities and traditional owners to benefit from industry, which is at an acceptable standard of environmental management.

### **2.3 Role of the Commonwealth Government**

The Territory and the States remain the principal regulators of mining and minerals processing. But the Commonwealth Government is increasingly moving to assume responsibilities or impose standards on the Territory and States. The recent Commonwealth Environment Protection and Biodiversity Conservation Act, for example, gives the Commonwealth powers to intervene in or oversee Territory approval processes for projects which may significantly impact on matters of national environmental significance. This would include projects that threaten to impact on World heritage areas, internationally listed wetlands, listed migratory species, listed threatened and endangered species, Commonwealth marine areas and nuclear related matters. There is growing area also of joint Commonwealth/Territory specification of standards and procedures: Water Quality Guidelines (ANZECC) and the Strategic Framework for Mine Closure (ANZMEC) being two prominent examples.

### **3. CURRENT NORTHERN TERRITORY GOVERNMENT ARRANGEMENTS FOR ENVIRONMENTAL ASSESSMENT**

The Northern Territory Environmental Assessment Act (1 982) commenced in 1984 with the introduction of the Administrative Procedures.

Projects likely to have significant environmental impacts may be subject to assessment under the Act at the direction of the Minister for Lands Planning and Environment (the Minister).

Documentation required under the Act is intended to provide the following information:

- a description and outline of the need for the development;
- a description of existing environmental conditions;
- consideration of alternative developments;
- assessment of expected/potential environmental impacts arising from the development; and
- safeguards proposed to minimise environmental impacts, and
- rehabilitation required following completion of the project, if relevant.

There are two alternative options in the assessment process in the NT.

1. Preparation by the proponent, and review by Government authorities and the public, of a Public Environmental Report (PER) or;
2.
  - (i) Preparation by the proponent, and review by Government authorities and the public, of a draft Environmental Impact Statement (EIS), and
  - (ii) Amendment of the draft EIS by the proponent in the light of Government and public comments.

Guidelines for matters to be addressed in a PER or EIS are made available for public comment and revised by Government on the basis of any comments received. Most non-mining projects subject to assessment under the Act only require examination at the PER level, however, most mining projects developments and expansions usually require detailed examination through an EIS.

The Minister is responsible for administering the Environmental Assessment Act and Administrative Procedures. The Minister determines which proposals should be subject to assessment under the Act and also decides on the appropriate level of assessment in each case.

The Department of Lands, Planning and Environment assists with implementing the assessment procedures on behalf of the Minister. This is one of the major functions of the Environment and Heritage Office of the Department.

The proponent of a proposal to which the Act may apply is required to notify the responsible Minister (e.g. for a mine, the Minister for Mines and Energy) who in turn provides the Minister with a notification of the proposed action and the details of the proponent. The Minister, after receiving notification may direct the proponent to provide further information to assist in determining whether or not a PER or an EIS is required. If the Minister considers that an EIS is warranted, he must consult the responsible

Minister and relevant advisory bodies. For proposed actions where a PER or an EIS is required, Guidelines for the preparation of the PER or EIS are prepared and released for public comment.

**Refer to Appendix Four - EIS Approval Process in Figure Format**

#### **4. IN SUPPORT FOR CURRENT LEGISLATIVE REGIME**

Community concern about the environment today, and specifically about the environmental impacts of utilising resources, has brought mining and petroleum activities into the public spotlight. However, the environmental aspects of mining are only one facet of the mining industry. The industry has played a vital historical role in opening up the Territory, in stimulating the development of roads and infrastructure and provision of services previously not available to many parts of the Territory. All this has contributed to the quality of life the Territory has now. The role of the industry is the same today. It would be reprehensible if the benefits that the industry brings to Territory life were forgotten or ignored, because there is a myopic focus on environmental costs.

From this submission and from other industry, research and Government advice, there is unequivocal evidence that there is a high degree of environmental responsibility and awareness within the industry today. There is strong evidence that the NT mining companies continue to meet and exceed community standards and foster continuous improvement to meet the growing environmental requirements of the future. Companies have the capabilities for identifying and solving environmental problems and this position is advanced continually through research and development. The most recent example of this is the securing of an AusIndustry Grant from the Commonwealth Government by the Minerals Council. This project will analyse, develop and specify some options and some solutions for the effective avoidance and management of acid sulphide mining wastes so as to protect environmental, health and economic outcomes and secure access to future mineral resources. Additionally the work will include the documentation of a comprehensive practical toolkit detailing the issues, options and solutions for the management of acid sulphide mining wastes for use by the wider Australian mining and land management industries.

Given current legislation and a desire from within industry to minimise impacts, the community are generally able to view new mining operations with confidence that the environmental values of an area will not be ignored.

Environmental responsibility is universally accepted and promoted within the resource industry, however, there is a need for Government and industry to encourage and enhance its acceptance generally.

There are three main components needed to enable this to happen. Firstly, realistic environmental legislation and Government management. Secondly, objective public education about sustainable development and the need to combine environmental responsibility with resource use and thirdly, acknowledge and continue to work on incentives for environmental management within industry such that it is economically and socially beneficial and not dependant on legislation and Government controls.

The resource industry has to operate within a framework of good business practice, which includes the duty to assess the potential environmental impact of new activities through front end planning. Currently this is undertaken through a collaborative programme so that planning and approval processes of Government and industry better relate to and recognise each other's needs. Commitment to good environmental practice and management by industry is a serious business commitment to the community and goes well beyond the gaining an immediate positive effect to the financial bottom line of business. When this commitment is made it accepts the position that long-term benefits, not just financial, need to accrue to both business and to the community.

Governance of the Territory's resource industry operates currently through a cooperative and collaborative arrangement between Government and industry and the Minerals Council is firmly of the view that these arrangements will continue to meet the needs of the Territory in its current and future economic development phases. The Minerals Council believes that the health of the Territory's social and economic fabric will require a viable and vibrant resource industry, which includes a clear and defined regulatory regime.

Having said that, the Minerals Council believes that there may be scope for improvement in the understanding of the regulatory processes by external stakeholders as to the responsibilities of various Government agencies in the Territory. For this to occur industry and Government need to engage positively and inclusively with stakeholders over issues of concern. It will require non-government and industry agencies to work constructively with Government and industry to promote the interest of community without rhetoric and bias.

Government needs to ensure that the influence of particular sectional interests does not impede the Territory's ability to act on behalf of the broader community.

Drawing upon the experiences of the States that have already established environmental protection agencies is a worthwhile exercise, however, care must be taken not to attempt to assume a "one style fits all" approach. The Territory is an immature economy largely dependent on Government spending and the resource industry. There is no substantial primary, secondary or tertiary industries. To create a new Government agency at this point in the Territory's development will result in unnecessary costs to taxpayers and industry and deliver no lasting benefits.

Use of the word independent in this current debate is questionable. Independent is a politically charged and increasingly emotive term. It has been virtually emptied of meaning by the incessant and indiscriminate use of its perceived public and political leverage. In spite of its superficial appeal, use of the word denies examination of the more important and fundamental issue of environmental assessment and regulation in the Territory.

Acknowledgement by community and other stakeholders on the industry's performance in the Territory has been articulated in recent independent surveys through:

- Community Attitudes and Perceptions Survey 2003 prepared by Auslink - International Marketing Consultants (Darwin based); and,
- Opinion Leaders Survey 2003 prepared by Inside Story - Research and Knowledge Management (based in Sydney).

In the Community Attitude and Perceptions Survey, survey groups generally believed that the Territory resource industry performs well with regard to:

- Provision of a safe working environment;
- Environmental management;
- Creation of career opportunities for young people; and
- Provision of benefits for indigenous communities.

Inside Story's survey found similar results with stakeholders (which included NGOs, unions, land councils, political, Government) rating the Minerals Council and the industry well with a scorecard of 75% support.

## **5. CONCLUSION**

The Northern Territory has a high level of dependence on the resource industry and minerals and petroleum development will continue to play an important role in the continuing health of the Territory economy.

Government and community recognise the important progress the minerals and petroleum industry has made over recent years, and commitment shown by individuals at all levels to improving the industry's environmental performance. It is a minority of people who are demanding a change to legislation to change environmental management in mining. The Territory resource sector plays a critical role in local and regional economies. The sector has brought forward important technical innovations in environmental management. It has begun also to work constructively with regional, remote and indigenous communities, which in the Territory has resulted in strong and mutually beneficial relationships. Broader stakeholder recognition of the leadership shown by industry in these areas are not only fair - it will do much also to reinforce the industry's commitment through difficult economic times.

The current system of regulatory control by the Minerals and Energy Group and the Office of Environment and Heritage is transparent, inclusive and accountable and is applicable for the current and immediate future of the Territory's development. The whole-of-project management approach by the Minerals and Energy Group has enabled the Territory resource industry to operate to the best level of efficiency and effectiveness given the issues associated with market prices, Australia dollar, corporate re-structuring and associated global issues.

Industry recognises that progress can be achieved only through open dialogue and engagement of all key stakeholders. This is adequately achieved through the current environmental assessment processes whereby community and others have input into minerals and other developments. Additionally, companies take the responsibility further through structured community relations programmes and paying particular attention to the needs of people, groups and communities that potentially impacted upon by a project..

Independent community surveys, while not focusing solely on environmental matters, have highlighted the support and acceptance by broad community and an understanding that industry does perform well in environmental management. The Minerals Council has used the survey results to continue to improve the position and performance of the industry in the Territory and to work with stakeholders towards common goals.

Where Government has moved away from direct prescriptive regulation towards greater management by industry with audits by Government, industry and Government need to ensure that all stakeholders understand the respective roles and responsibilities of different actors.

**6. APPENDICES**

Chart of Typical Gold Mining Operation and Tailings Storage Facility

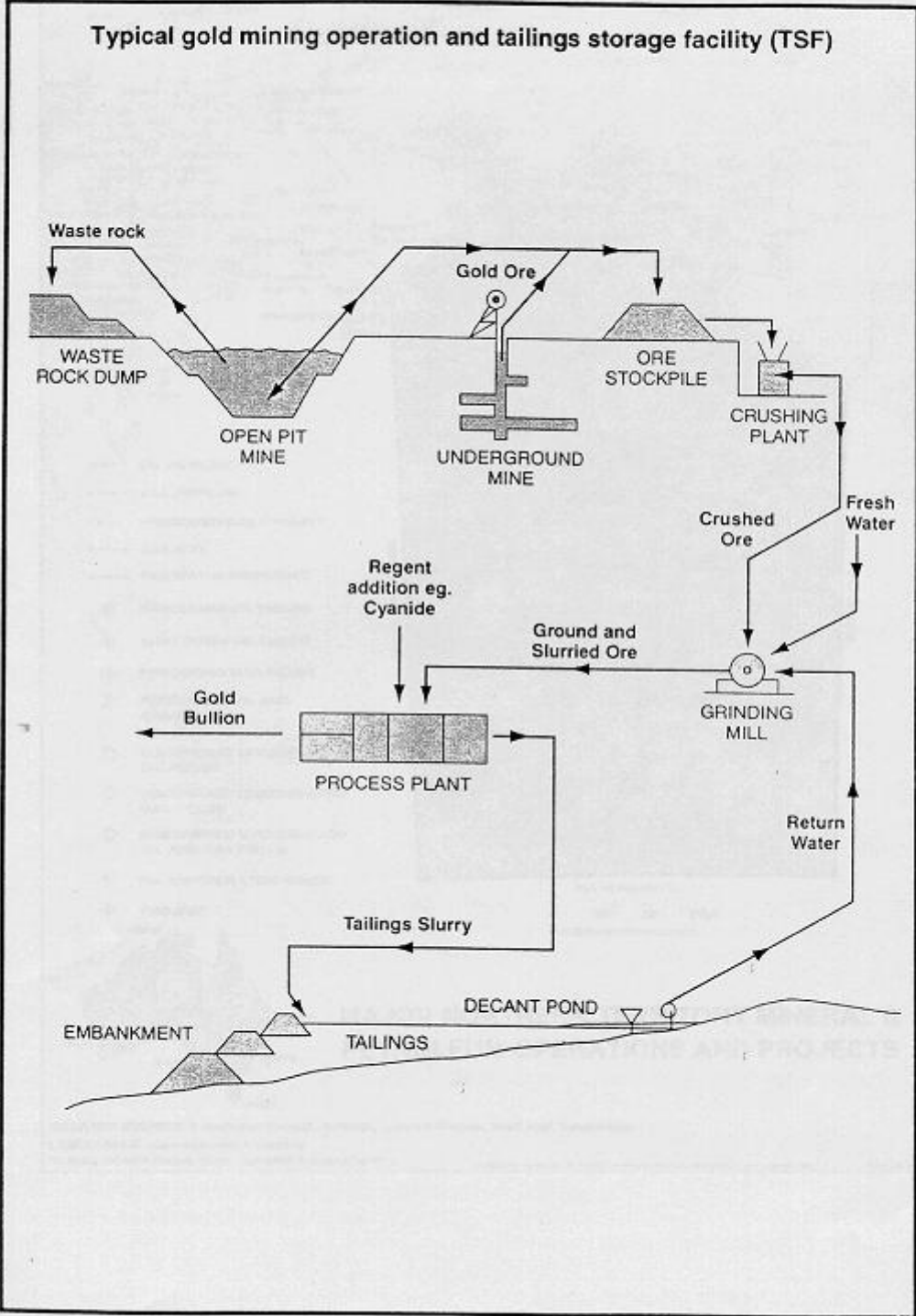
Map of Territory Projects and Prospects

The Minerals industry's Social Contribution to the Northern Territory

EIS Approval Process In Figure Format

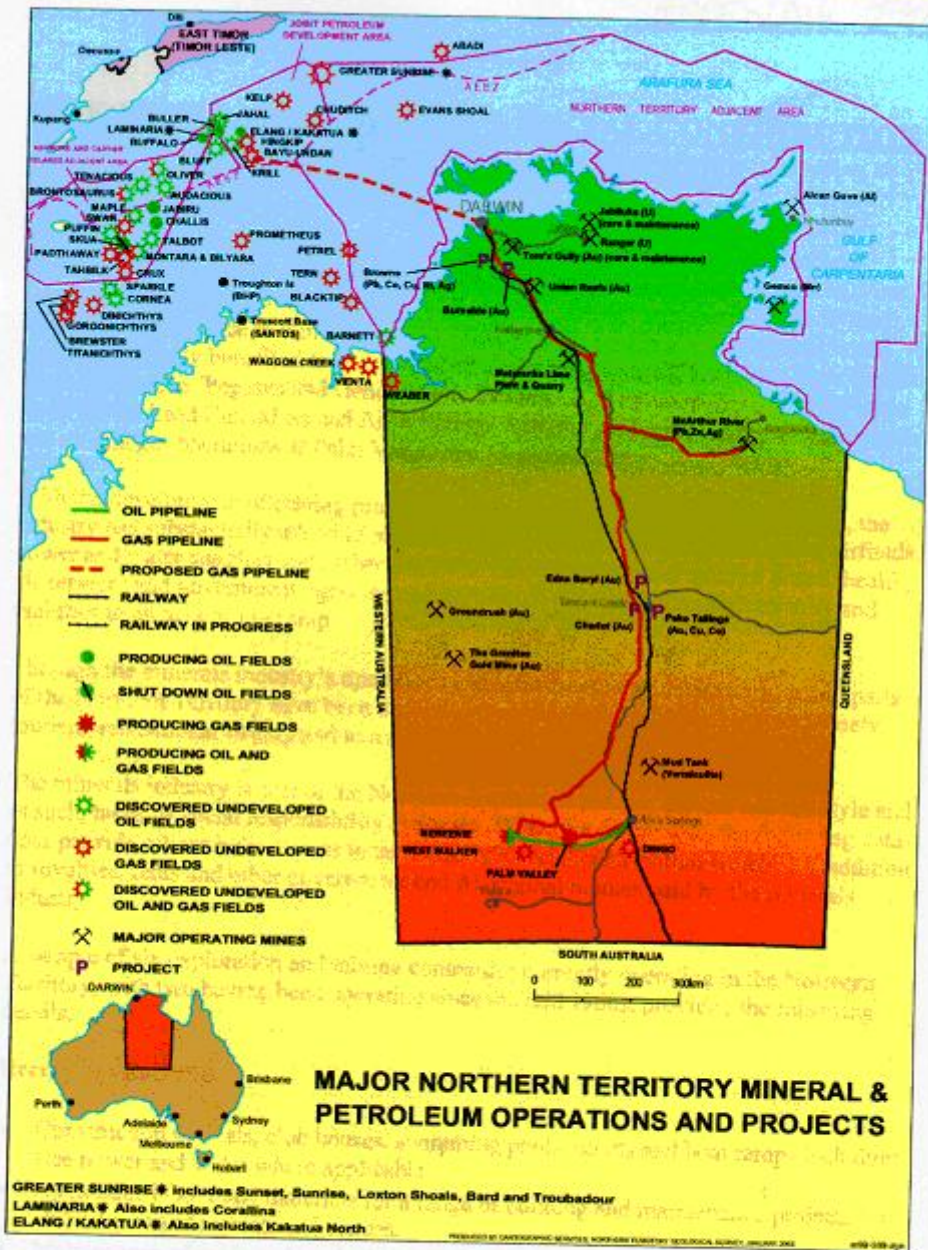
APPENDIX ONE

APPENDIX ONE



APPENDIX TWO

APPENDIX TWO



**APPENDIX THREE****THE MINERALS INDUSTRY'S SOCIAL CONTRIBUTION TO THE NORTHERN TERRITORY - 1999**

The minerals industry is responsible for the establishment of many of the Northern Territory's towns and communities both historically and currently. Towns such as, Pine Creek, Tennant Creek, Batchelor, Jabiru, Nhulunbuy and Alyangula on Groote Eylandt, all owe their existence to minerals industry developments. Over the years, other towns have substantially benefited from exploration and mining such as, Katherine from the Mt Todd Gold Mine (Pegasus and General Gold Resources), Borroloola from the McArthur River Silver Lead Zinc Mine and Alice Springs from the gold mines in the Tanami region and oil and gas operations at Palm Valley and Mereenie.

With the development of mining projects in remote parts of the Northern Territory, the industry has substantially added to regional development by way of roads, ports, airfields, power and water supplies and assisted in the expansion of services such as postal, health, air services and government agencies and introduced recreational and community and facilities to an area or township.

Through the minerals industry's operations and infrastructure developments, many parts of the Northern Territory have been opened up to other industry developments namely tourism, recreational fishing and to a lesser extent agriculture and horticulture.

The minerals industry is part of the Northern Territory's history, culture and life style and as such, takes its social responsibility seriously. While not conclusive, the following data does provide salient indicators as to the industry's social contribution which is in addition to royalties, rents and other government and Aboriginal monies paid by the minerals industry.

A sample of six exploration and mining companies currently operating in the Northern Territory, with two having been operating since the mid 1960s, provided the following details.

**Recreation Facilities**

- Construction of ovals, club houses, swimming pools, courts and boat ramps including free power and water where applicable.
- Apprentice labour and materials for a range of building and maintenance projects for club houses and recreational venues.
- Maintenance of roads and tracks into recreational areas.
- Restoration work a local beach (\$30000 project).

- Annual sponsorship of recreational and cultural events such as, Barunga Manyulluluk, Ramingining Cultural and Music Festival and Yothu Yindi Foundation's Garma Festival of Traditional Culture
- St Patrick Day Races
- Support for the Warrumungu Dance Group
- Support of community art awards and Aboriginal art awards

### **Sporting Events**

- Funds for travel assistance
- Sponsorships for local clubs and competition
- Donations of team clothing
- Prizes and awards for junior competition

### **Educational**

- Annual prizes to NT University's undergraduates courses
- Annual prizes for local primary and high school, tertiary scholarships, annual award for youth achievement
- Aboriginal employment programme for numeracy and literacy
- Assistance to community organisations in areas of training in first aid
- Annual sponsorship of NT Vocational Training Awards
- Provision of paid employment to undergraduates from the NT University
- Financial support for the NT University Foundation
- Provision of land and housing for a newly established Christian in a NT regional centre

### **Health Support**

- Community Rewards on Continuing Safety (CROCS) funds \$30000 per annum for community projects of a health and safety nature
- Support to Miwatj Health Outreach Programme to assist with Aboriginal health and welfare projects
- Corporate members of major medical research projects such as, Heart Foundation, Diabetes Australia, Cancer Council and Asthma Foundation.
- Provision of ambulance service to township residents at no cost to recipients of the service
- Assistance to the Menzies School of Health Research

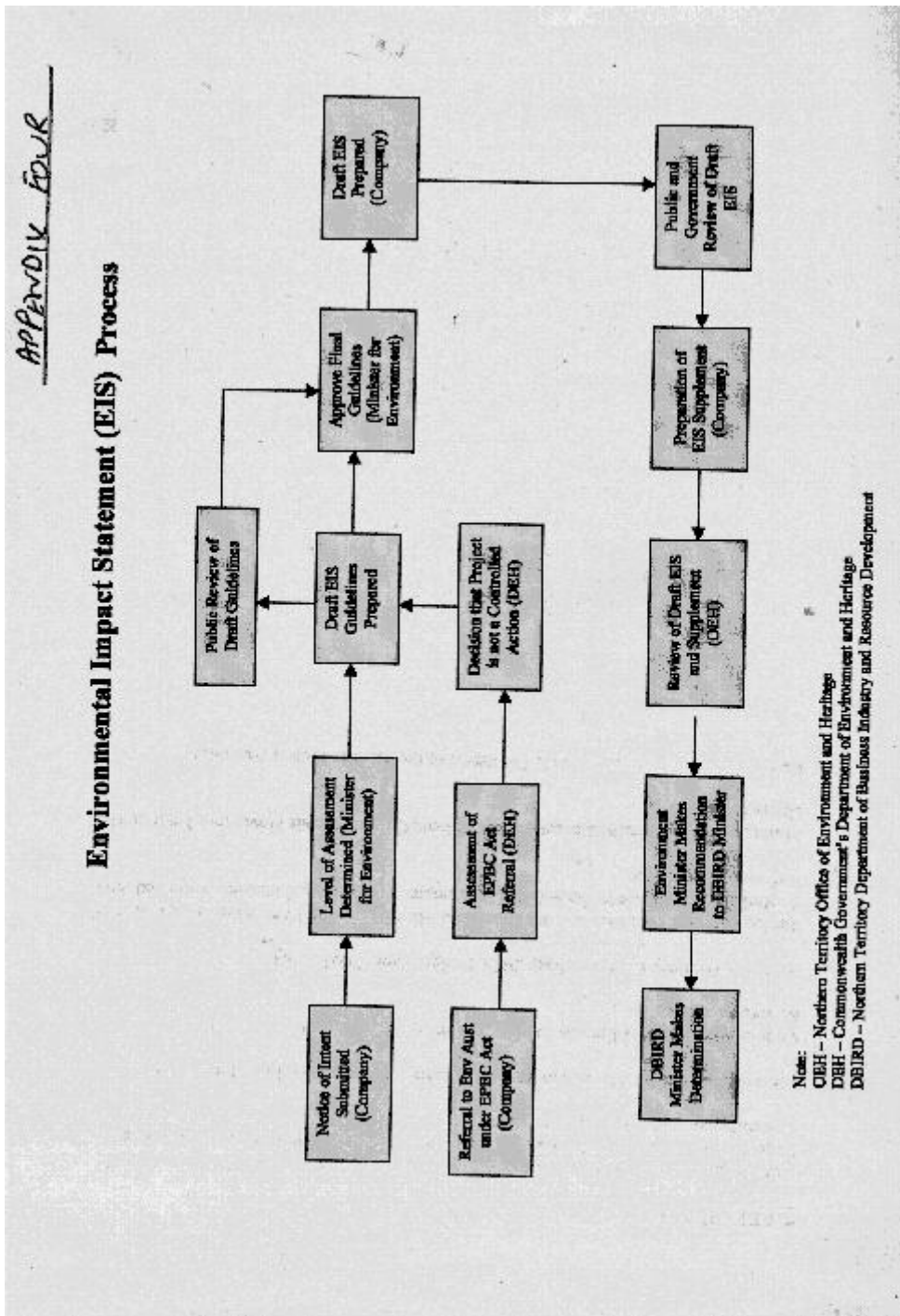
### **Community Infrastructure**

- Operation of regional airports and airfields
- Financial support for community buildings including art centres, health centres and community care centres
- Support to non-profit community groups by way of repairs and maintenance on buildings and free electricity

**Other Contributions**

- Donation of ex-company vehicles to Aboriginal communities
- Support to local ranger programmes
- Apprentice labour
- Donation of second hand equipment
- Expertise of other personnel including environmental engineers, accountants and heavy earth moving operators

APPENDIX FOUR



## **7. REFERENCES**

Exploring: Australia's Future - Impediments to Increasing Investment in Minerals and Petroleum Exploration in Australia August 2003. House of Representatives Standing Committee on Industry and Resources.

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SUBMISSION NO. 29

**CHAMBER OF COMMERCE NORTHERN TERRITORY**

Ms Carole Frost  
*Chief Executive Officer*  
 Received 18 May 2004



13 May 2004

Ms Della Lawrie M.L.A.  
 Chairman  
 Sessional Committee on Environment and Sustainable Development  
 Legislative Assembly of the NT  
 GPO Box 3721  
 Darwin NT 0801

Dear Ms Lawrie

On behalf of the Chamber of Commerce Northern Territory (the Chamber) please find enclosed our submission into the Inquiry, *An Environmental Protection Agency for the Northern Territory*.

The Chamber thanks the Northern Territory Government for the opportunity to make comment on this important issue. Whilst the majority of the Chamber of Commerce's members are not primarily involved in the mining industry or major projects, most of our members are affected by the viability of mining and project work conducted in the Territory. The costs of doing business either through legislative or regulatory regimes are of vital interest to the Chamber and our members.

The Chamber understands that the Sessional Committee will be holding meetings in Darwin on the 11<sup>th</sup> June 2004 and I ask that the Chamber be listed to meet with the Committee at this time.

If you require any additional information please contact me directly.

Yours sincerely

Carole Frost  
*Chief Executive Officer*

box 1020 darwin nt 0801 • 1/2 shephard street darwin nt 0800  
 (PB) 0800 8100 • fax: (08) 8981 1608  
 E: info@chambernt.com.au • web: www.chambernt.com.au



**SUBMISSION to the  
Appointed Committee on Environment and Sustainable Development  
Requesting an Environmental Protection Agency for the Northern Territory  
May 2004**

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**Chamber of  
Commerce  
NT**

**SUBMISSION  
to the  
LEGISLATIVE ASSEMBLY  
OF THE NORTHERN TERRITORY**

**SESSIONAL COMMITTEE ON ENVIRONMENT  
AND SUSTAINABLE DEVELOPMENT**

**INQUIRY:  
AN ENVIRONMENTAL PROTECTION AGENCY  
FOR THE  
NORTHERN TERRITORY**

**May 2004**

Page 1 of 5

## Who We Are

The Northern Territory Chamber of Commerce and Industry Inc (Chamber of Commerce Northern Territory) has been operating since 1957 and is the Territory's largest employer organisation, representing approximately 1500 businesses throughout the Territory from a wide cross section of industry. Our members employ approximately 22,000 employees or 26.5% of the total workforce.

The Chamber is a foundation member of the Australian Chamber of Commerce and Industry (ACCI), the largest single organisation giving a united voice for industry and commerce in Australia and is affiliated with the Australian Retailers Association.

The Chamber of Commerce NT is a not-for-profit organisation funded through business membership and is totally committed to supporting the needs of its members. Its primary roles are to lobby governments at all levels on industry matters, represent business issues to all sectors of the community nationally and internationally, disseminate relevant business information to members and to provide a range of services across the Territory.

The Chamber also represents industry sector members through the Manufacturers Council and International Business Council, and promotes business excellence and opportunities through the NT Expo and Central Australian, East Amhem and Katherine Expos.

## Vision Statement

We are the leading Northern Territory business organisation influencing the economic environment and maximising business opportunities for our members, and our mission is to maximise our members' business success.

## Environmental Division

The Environmental Division of the Chamber of Commerce has been an integral part of Chamber services for over 7 years.

The Division has worked closely with both members and non-members on Northern Territory and Federal Government programs including:

- Being a signatory to the Federal Eco-efficiency Agreement
- Greenhouse Challenge Program
- Trade Waste Management System
- Environment Liaison Program

Outcomes from our involvement include:

- Over 50 energy audits
- Exhibits at NT Expo and Alice Springs Expo
- Business Seminars for Greenhouse Challenge members
- Development of industry Codes of Practice for the auto repair industry, spray painting and auto repair industry, service station operators and the NT hotel and NT mango industries
- Production of the Environmental Management Handbook and distribution to over 120 copies to businesses and interested individuals
- Regular visits Territory-wide to business and industry by our Environmental Officers, through the Greenhouse Challenge and Environment Liaison Programs and over 300 visits have been undertaken during the Industry Trade Waste Program.

It is through this extensive industry experience that we are able to submit an educated view on the issue of the efficacy of an Environmental Protection Agency of the Northern Territory.

## Submission

The Chamber believes that the Sessional Committee on Environment and Sustainable Development Inquiry into *An Environmental Protection Agency for the Northern Territory* provides an important opportunity for the business community to demonstrate its solid record in environmental management and performance. The inquiry provides the opportunity to examine whether better outcomes for the business community and environment would be achieved through changes in current administrative arrangements.

In assessing the current system against improved outcomes we believe that major changes to the current arrangements cannot be justified and indeed may reduce the current efficiencies at least in the short term. The Territory has an immature economy largely dependent on Government spending and the resource industry. To create a new Government agency at this point in the Territory's development will result in unnecessary costs to taxpayers and industry and deliver no identifiable lasting benefits.

The business community understands the community's desire for improved environmental protection and as such responds to these expectations through research and development. The business community currently works within a wide range of environmental legislation including the *Waste Management and Pollution Control Act 1999* and the *Environmental Assessment Act 1982* and therefore does not support the possibility of the introduction of another regulatory body.

The Chamber is satisfied that the current system of environmental assessment and management by the Government for the business and industry community is objective and open to scrutiny and is happy to work with Government and others on the problems that are perceived with an open mind, and come up with the best solutions for all concerned.

The Chamber would also like to support the consultation process outlined by the NT Minerals Council in their submission. We believe that such a consultative process would enable all stakeholders a chance to outline their issues with regards to the creation of an Environmental Protection Agency while a panel of experts from a variety of industries would enable an effective reporting process to Parliament.

**Conclusion**

The Chamber does not believe an Environmental Protection Agency is necessary in the Northern Territory. Business in the Territory already complies with a variety of legislation and does not need to deal with another potentially regulatory body, established to meet the needs of a particular section.

The Chamber is also concerned that such a regulatory body has the potential to slow down and disrupt future investments and developments essential to the Territory's future prosperity, despite the fact that these proponents may have met all the relevant legislative requirements.

The Chamber and its members are aware that pressure on the environment is increasing and that the community is demanding improved environmental protection. As such the business community is pro-active in working with Governments at all levels, other industries and the business community to advance research and development in these areas as well as encouraging and enhancing environmental responsibility within the general business community.

SUBMISSION NO. 30(A)

**ENVIRONMENT CENTRE OF THE NORTHERN TERRITORY, AUSTRALIAN  
CONSERVATION FOUNDATION, THREATENED SPECIES NETWORK, WORLD  
WIDE FUND FOR NATURE AUSTRALIA, AUSTRALIAN MARINE CONSERVATION  
SOCIETY AND ENVIRONMENTAL DEFENDER'S OFFICE (NT) INC**

Ms Lee McIntosh LLM, LLB, BSc

*Environmental Consultant*

Received 7 June 2004, Final Version Received 11 June 2004

Combined  
environment group's  
and EDO submission  
to the  
Sessional Committee  
on Environment and  
Sustainable  
Development Inquiry  
into an  
Environmental  
Protection Agency for  
the Northern  
Territory



Environment Centre of  
the Northern Territory



Australian  
Conservation  
Foundation



Threatened  
Species  
Network



WWF  
AUSTRALIA



ENVIRONMENTAL  
DEFENDERS OFFICE (NT) INC.

## 1. Executive Summary

The Northern Territory needs an EPA because:

1. It is the responsibility of government, on behalf of the community, to ensure that the environmental challenges the NT faces are fully, transparently and effectively addressed.
2. This requires a high level body which has the standing and authority to provide strong leadership in setting environmental standards and improving environmental performance and outcomes across government, industry and the community.
3. In order to retain public confidence in environmental protection measures, a suitably resourced body with a high degree of statutory independence, transparency and accountability is required.
4. Responsible development, including the major industrialisation process currently underway, requires high level, strategically integrated environmental planning; detailed independent assessment and reporting; and diligent monitoring and auditing to ensure compliance with environmental obligations.
5. Due to a combination of rising public expectations, changing obligations at a national and international level, and increasing industrialisation pressures, any responsible environmental protection body in the NT faces an increasingly large and complex work load, requiring significantly enhanced capabilities.
6. The existing serious environmental threats and degrading processes, including unsustainable or inadequately managed resource use in both terrestrial and marine environments; increasing waste and pollution issues; and broadscale problems arising from introduced invasive species, changed fire regimes and climate change, collectively require sophisticated and integrated whole-of-government responses, which in turn requires leadership from within government.
7. Governments promoting large scale development need access to advice that is reliable, comprehensive and precautionary.
8. The current process of implementation, management and review of legislation that has an environmental protection element is spread across many government agencies. As a consequence the environmental protection measures incorporated in pieces of legislation do not receive comprehensive and co-ordinated audit and assessment at review times. Nor do the disparate environmental protection measures enjoy the prominence or support and enforcement that they warrant. The core business of these agencies is not environmental protection and so this element of the legislation is overlooked or downplayed. Only a dedicated EPA can provide this comprehensive and integrated approach to environmental management and protection.

The NT has an opportunity to put in place an EPA which accords with world's best practice. Such a regulator would have the following characteristics:

- Be an independent, stand alone, statutorily constituted agency with statutory objects and statutory responsibilities;
- Be governed by an independent Board;
- Have formal accountability;
- Be constituted in separate divisions to avoid conflicts of interest developing;

- Be adequately resourced (including appropriate funding and expert and experienced staff).

and would undertake the following functions:

1. Environmental planning
2. Environmental policy development
3. Environmental impact assessment
4. Monitoring
5. Enforcement
6. Provide a registry of information
7. Facilitate community consultation
8. Encourage voluntary initiatives
9. Design environmental economic instruments
10. Environmental Education
11. State of the Environment reporting
12. Audit other government institutions
13. Implement sustainability

Implementing such an EPA would also require the introduction of an environmental appeals system to provide a check and balance on the EPA's decisions and ensure a robust environmental decision making process generally.

## **2. Submission to the Sessional Committee on Environment and Sustainable Development: EPA inquiry**

This submission is made on behalf of:

- Environment Centre Northern Territory
- Australian Conservation Foundation
- Australian Marine Conservation Society
- Environmental Defender's Office (Northern Territory)
- World Wide Fund for Nature Australia
- Threatened Species Network

We thank the Committee for the opportunity to make a submission to your inquiry into the efficacy of the Northern Territory (NT) operating with an Environmental Protection Authority (EPA). We understand that the terms of reference for the inquiry are:

- 'arguments for and against establishment of an EPA';
- 'options for the structure of an EPA taking account of the demographic, geographic and financial context of NT';
- 'if a particular model is recommended, options for its staged introduction'.

## **3. Introduction**

The NT is currently undergoing a new wave of industrial development, including gas-related industry; expanded mining operations; irrigated agriculture; and aquaculture, adding new impacts and threats to an environment which has already undergone significant modification, fragmentation and degradation.

One indicator that, contrary to popular perception, all is not well with the NT environment is the state of our indigenous biodiversity.

The southern arid section of the NT has already lost, to our knowledge, 40% of its native mammal species. Now scientists are finding that across the woodlands and forests of northern NT a combination of changes and impacts is leading to an unprecedented decline in a range of species, particularly amongst birds and mammals .

The NT now has 72 native plant species, 9 fish species, 15 bird species and 21 mammal species on its threatened species list, and further extinctions from amongst these listed species must be likely.

Introduced species, including dozens of exotic mammal, insect and plant species, are having a pervasive degrading impact across most of the NT. Despite the damage caused by such species, NT law still permits the introduction of new and potentially serious invasive species, e.g. for pastoral use.

Our sensitive and complex marine and coastal environments are facing increasing pressures and urgent conservation challenges, while our expanding urban areas bring with them a wide range of environmental impacts and issues.

The cumulative impacts of the NTs industrial, land management, resource utilisation, settlement and lifestyle activities (our “ecological footprint”), is large and growing quickly.

These changes and challenges are occurring against the backdrop of global warming and climate change, processes which will further compound and complicate the impacts of any local activities. For example, the predicted increase in intensity of storm events and cyclones raises serious concerns about industrial developments sited in or near marine and coastal environments.

According to the government, planned new gas-related industrialisation developments in the NT are likely to increase the Territory’s annual greenhouse gas pollution by almost 100% , (and this is likely to be an underestimate).

Unless properly addressed, future generations will be left with a massive environmental debt: a legacy of depleted or exhausted resources, degraded lands, polluted waterways, impoverished oceans, greatly reduced biodiversity, and large quantities of toxic, hazardous and intractable wastes. The socio-economic impacts of this legacy will be serious and long term.

The institutions and underlying legislation in place in the NT to address environmental protection are inadequate to deal with the scale, complexity and seriousness of existing and foreseeable future problems.

The Environment and Heritage unit (or office) of the Department of Infrastructure, Planning and Environment is beset by an increasingly large and complex workload, potential conflicts of interest and marginalisation vis a vis other sections of government, and inadequate resourcing.

It lacks a statutory basis or statutory functions, and is therefore able to be changed or abolished by mere executive action without any parliamentary or public scrutiny. It is not independent or separately accountable to the public or parliament, which means it lacks credibility in government, industry and in the wider community.

This submission outlines these problems and concludes that there is an urgent need for current environmental institutions to be overhauled and for a new independent

environmental regulator such as an EPA to be established with the goal of providing effective and accountable governmental action and leadership on environmental issues.

In overhauling the NT's environmental institutions, the NT has an opportunity to put in place an EPA in accordance with world's best practice. In order to be world's best practice, an NT EPA would need to undertake the following activities:

1. Environmental planning
2. Environmental policy development
3. Environmental impact assessment
4. Involvement in decisions about developments and management schemes
5. Monitoring
6. Enforcement
7. Provide a registry of information
8. Encourage voluntary initiatives
9. Design environmental economic instruments
10. Facilitate community consultation
11. Environmental Education
12. State of the Environment reporting
13. Audit other government institutions
14. Implement sustainability

This submission outlines why it is necessary for environmental regulation in the NT to include all of these activities, and why it is necessary for an independent, well resourced and expert EPA to undertake them.

Given that the phrase "Environmental Protection Authority (EPA)" is commonly understood as an environmental regulator, any new regulator in the NT should be known as the EPA. However, in saying that an environmental regulator should be known as the EPA, it is important to note that the term "EPA" is actually used in Australia to describe several types of environmental regulator, each with varying functions and responsibilities. There is therefore no one model or structure which an EPA in the NT should follow. Rather, NT should take the best parts of each EPA in Australia to create a world's best practice environmental regulator with the following characteristics:

- Be an independent, stand alone, statutorily constituted agency with statutory objects and statutory responsibilities
- Be governed by an independent Board
- Have formal accountability
- Be constituted in separate divisions to avoid conflicts of interest developing
- Be adequately resourced (including appropriate funding and expert and experienced staff)

This submission describes why an EPA in the NT will need these characteristics, and how it can be constituted to ensure that it has them. It also details the appeals system which will be necessary to provide a check and balance on the EPA's decisions and ensure a robust environmental decision making process generally.

Constituting an EPA will necessarily take time and resources, and it will therefore probably be necessary to stage its introduction. This submission therefore concludes by describing how the EPA could be introduced into the NT in stages. Appendix 1 then contains a summary of the law reform which will be necessary in order to establish an EPA for the NT.

#### 4. Existing environmental regulator in the Northern Territory

##### 4.1 Office of Environment and Heritage

At present, environmental regulation in NT is primarily carried out by the environment section of the Office of Environment and Heritage (OEH) within the Department of Infrastructure, Planning and Environment (DIPE).

The functions of the environment section of the OEH are to:

- Provide advice to the Minister for Environment and Heritage on environmental impact assessment of development proposals throughout the NT.
- Prepare and coordinate government environmental protection policies.
- Coordinate NT Government representation on the Australian and New Zealand Environment and Conservation Council (ANZECC), the National Environment Protection Council (NEPC) and associated committees.
- Provide information and advice on environmental management matters .
- The environment section of OEH currently consists of approx. 22 full time employees. It is responsible to the Minister for Environment and Heritage.

There are six other divisions in DIPE besides the OEH. Those divisions are responsible for matters such as developing government infrastructure, developing and managing national parks, developing and managing Crown land, administering the NT Planning Scheme, issuing building approvals, managing water resources and managing pastoral lands. All of the divisions of DIPE other than the OEH are responsible to the Minister for Transport, Infrastructure, Lands, Planning and Parks and Wildlife.

##### 4.2 No statutory basis

The OEH has no formal statutory basis. This means that it can be altered or disbanded at any time by mere executive action. There need not be any parliamentary or public scrutiny of any changes to the constitution of the OEH, or indeed any scrutiny of a decision to dissolve it altogether. This is problematic for several reasons, including:

- The OEH is the primary government body with responsibility for the environment. Both industry and the community rely upon it to provide necessary environmental services, and therefore have an interest in the manner in which it operates. They should therefore also have some input into changes to its constitution and operation.
- The OEH is the only body which undertakes the functions listed in 4.1. If the OEH were dissolved or amended, it is unclear who, if anyone, would have the capacity or expertise to carry out these functions.
- The OEH has no formal statutory objects. While it carries out the functions listed above, it need not carry them out with environmental protection objectives in mind. This means, for example, that it could lawfully provide advice to the Minister on environmental impact assessment in a way which was not consistent with the protection of the environment or sustainability. Such advice would, however, be inconsistent with what the public's reasonable expectation that the OEH should only provide advice in a way which aims to protect the environment.

##### 4.3 No statutory functions

Just as the OEH does not have any formal statutory basis, neither does it have any formal statutory functions. While it currently carries out the functions listed above in 4.1,

these functions could be amended at any time by mere executive action taken without any legislative or public scrutiny. This means that the government bodies, industry and the community who depend upon the OEH to perform these functions would not have any input into how and why the functions should be changed. And as noted above in 4.2, there is no guarantee that anyone else would have the capacity or expertise to carry out those functions.

#### 4.4 Lack of accountability and independence, and potential conflicts of interest

The informal and non-statutory nature of the OEH has several other repercussions. For example, it means that the OEH does not have to produce its own separate annual report and is not independently accountable to parliament for its actions. Given that these are the primary means by which government and the community evaluate the effectiveness of government bodies, the informality of the OEH's structure is a serious obstacle to assessing whether it is achieving the NT's environmental objectives or not. The non statutory nature of the OEH also means it is subject to executive and Ministerial direction. This leaves it open to claims of political interference, which undermines public confidence in the OEH.

As noted above in 4.1, the OEH carries out its environmental regulatory functions while operating as a division of DIPE. At the same time, other divisions of this Department are required to carry out development projects. If those development projects may have a significant impact on the environment, the OEH will necessarily be involved in assessing them. Even if there is no formal assessment of such projects, the OEH will be involved in setting policy which may affect them. This automatically involves DIPE/OEH in a conflict of interest – being both the proponent and regulator of a particular project. (A recent example of this problem can be seen in that DIPE is the proponent of the Glyde Point Industrial Estate project and the OEH is conducting a formal environmental impact assessment of that same project.) And although OEH staff may be committed to environmental protection and report to a separate Minister than the other divisions of DIPE, at a day to day departmental level this does not remove the potential for a conflict of interest to operate. This constant potential for a conflict of interest can seriously undermine public confidence in the environmental regulatory system in NT.

#### 4.5 Limited resources

Due to the fact that it is a small office of a much larger government department, the OEH does not have a sufficiently independent source of funding. The funding it does receive supports a relatively small staff dealing with an increasingly large and complex workload with increasingly serious implications for the environment and the community.

This environment section of OEH has an annual budget of less than \$5 million, which cannot do justice to the proper role and functions of any environmental protection body, or the scale and importance of the task OEH is charged with. The low budget means it is greatly constrained in the programmes it can operate and the assistance it can provide to government, industry and community in respect of environmental issues.

As outlined in the introduction, a world's best practice environmental regulator has several important functions. However, the small scale of the OEH necessarily means that it simply cannot carry out many of those functions. For example, the OEH does not play a significant role in strategic environmental planning, in development control, or in monitoring and enforcement. And significantly for industry, it does not play any role in developing incentives for improved environmental performance, in developing

environmental economic instruments or in conducting environmental educational programmes. This places NT industry at a competitive disadvantage with industry in the rest of Australia. Neither is the OEHL able to undertake the important task of preparing comprehensive State of the Environment reports for the NT.

The small size of the OEHL also means that, no matter how professional and committed its staff are, it simply cannot have the depth and breadth of experience and expertise in the various technical and environmental disciplines which an effective environmental regulator needs.

Finally, the small scale of the OEHL means that it must choose to focus on particular, usually high profile issues, and therefore is prevented from carrying out its functions in a consistent and strategic fashion. For example, it must choose what developments or industries to become involved with or what regions to provide assistance to. The industries or regions it doesn't provide assistance to are disenfranchised, again undermining both industry and community confidence in environmental regulation in the NT. Conversely, if the OEHL chooses to closely scrutinise one industry but not others, those scrutinised industries may feel singled out.

## **5. Functions of an environmental regulator**

In order to protect its environment from current and future degrading activities, NT needs to completely overhaul its current environmental regulatory institutions and establish a world's best practice environmental regulator such as an EPA. Such a body would have the following functions:

### **5.1 Environmental planning**

It is widely recognised that environmental land use and marine planning is the most important general means of environmental protection because it encompasses all aspects of environmental management and ensures the sustainable use and development of land and seas in a fair and orderly manner .

The first part of the environmental planning process assesses the natural resources and conservation values in an area and the carrying capacity of that area for the cumulative impacts of certain types of land/sea use and development. It then identifies areas of greater or lesser ecological suitability for particular development purposes . This ensures that particular developments will be undertaken in the areas where they will have the least environmental impact. It also provides certainty for developers and land/sea managers from the outset of their own planning process, as they immediately know where they should plan to undertake projects. This prevents them from planning to carry out activities in an area where it is likely that their activities would be environmentally unacceptable. It also saves them the costs of operating in an area where expensive measures to mitigate environmental damage would be necessary.

Currently, NT environmental planning takes the form of the broad high level land use objectives which are described in the Northern Territory Planning Scheme and some of the resource planning undertaken by the Conservation and Natural Resources Division of DIPE. However, proper environmental planning should take place on several other levels. For example, planning must be done at an NT-wide level, regional level, and on a local level . It must also be based on ecosystem and catchment management principles . As such planning can only be effectively carried out by a well resourced, expert body with knowledge about the environmental issues across whole of the NT

environment, an environmental regulator such as an EPA is required to conduct it. In addition, as environmental planning requires consideration of cross border environmental issues, a peak body such as an EPA is ideally placed to consider those cross border issues and liaise with the relevant State bodies about them. Local environmental planning can be undertaken by local bodies. However, as the local environmental plans must be consistent with the regional and NT wide plans, there is again a need for a centralised environmental regulator such as an EPA which is able to co-ordinate them.

Examples of where strategic environmental planning by an EPA could have prevented, or could still prevent, environmental problems include:

- The proliferation of gas-related developments proposed across the Top End of the NT.
- The Phelps-Panizza Shoal Bay prawn farm which had to be relocated to Blackmore River and a second Public Environment Report completed following community concern about the original proposed location.
- Protection of the Darwin Harbour mangroves via conservation zoning could have averted environmental damage and community concern about developments at Bayview Haven, Wickham Point, Cullen Bay and the proposed Elizabeth River dam.

## 5.2 Policy development

Environmental protection policies are strategic environmental plans designed to protect either particular aspects of the environment, such as air quality or mangroves, or address a specific environmental problem, such as waste, or a specific industry, such as hydrocarbon refining. There is scope for the development of a range of different policies in the NT, from development of statutory Environmental Protection Objectives under the Waste Management and Pollution Control Act to development of guidelines and codes of conduct such as the Guidelines for Mineral Exploration in Coastal Areas of the Northern Territory.

In the six years since the Waste Management and Pollution Control Act has been in force, no Environmental Protection Objectives have come into force. And while some non statutory environmental protection policies have already been developed in the NT (such as the NT Waste Minimisation and Recycling Strategy, A Conservation Strategy for the Northern Territory, the National Ozone Protection Strategy, and the National Cleaner Production Strategy), there is a great need for environmental protection policies to be developed and enforced in many other areas. Such areas include water planning and allocation, mine site rehabilitation, aquaculture site identification and rehabilitation, and introductions of new exotic pasture species. There is also a need for a formal system of review of NT environmental policies to determine whether they are effective and how they could be amended to better achieve their environmental objectives.

Due to the fact that environmental policies address either specific portions of the environment, specific problems or specific industries, policies must be prepared by an environmental agency with expertise in that particular area. The agency must also be responsible for implementation of the policy, as having a policy which no one knows about or which no one adheres to is futile. The agency must also monitor the uptake and effectiveness of the policy. This is necessary so that if it becomes apparent that a policy is not resulting in improved environmental protection it can be reviewed and modified as required. An EPA is therefore required to make, implement and review environmental policies. In addition, as environmental policy making often requires consideration of cross border environmental issues, a peak body such as an EPA is

ideally placed to consider those cross border issues and liaise with the relevant State bodies with respect to these.

Examples of where an EPA with the ability to prepare and implement environmental policies could have prevented environmental problems include:

- A policy requiring mining rehabilitation bonds could have provided a source of funds for the rehabilitation of the Mt Todd mine. The operators of this mine were not required to lodge a rehabilitation bond equivalent to the cost of remedial works at Mt Todd. When the mine failed in 2000 the NT public was left with either a major environmental problem or a huge bill for rehabilitation. To date this issue has still not been resolved.
- A policy on pasture improvement and environmental weeds could have prevented or lessened the massive problem NT now faces from weeds.

### 5.3 Environmental impact assessment

The aim of environmental impact assessment legislation is to enhance the congruence of future developments with broad environmental goals, through clear, open, transparent and accountable processes. The importance of environmental impact assessment has long been recognised in NT by the Environmental Assessment Act 1982 and the Environmental Assessment Administrative Procedures 1984. However, due to the lack of an EPA to administer these legislative instruments, there are problems with the existing approach to environmental impact assessment in the NT which compromise its effectiveness.

Under the current system, government agencies with responsibility for developments or land/sea management refer proposals to the Minister for Environment when they believe there is a significant environmental issue. However, given that those agencies may not have any relevant environmental knowledge, they may not always refer proposals which should be referred. An EPA should therefore be established to develop statutory or administrative criteria to assist these agencies in determining how significant any particular proposal might be in terms of environmental harm. Specifically, an EPA should develop an indicative list of activities which have usually have, or could be expected to have, an environmental impact, and require all such proposal to be referred to it. The EPA should also be given the power to “call in” proposals which should be referred by an agency but are not. And to further ensure that no proposals which should be referred fall through the cracks, any member of the public should also be given the ability to refer proposals to the EPA, as happens in other Australian jurisdictions.

Once a proposal is referred, under the current system the Minister determines (1) which proposals should be subject to assessment under the Act and (2) the appropriate level of assessment. This places a huge administrative and time burden on a Minister who may often be new to the field of environmental protection and impact assessment, thus compromising the efficiency and effectiveness of the system. It can lead to decisions being made not to assess a project on the basis that it would be too costly to assess, rather than on a thorough analysis of the environmental issues involved. It may have also contributed to the fact that the assessment process has largely been confined to assessing only very large and visible proposals, rather than all proposals with significant environmental impacts.

Having a Minister make environmental impact assessment decisions brings the independence of the environmental impact assessment process into question, as a

Minister is necessarily a political decision maker. This undermines both developer and public confidence in the system and leaves all decisions open to accusations of political bias. Further, it may appear that the Minister's decisions about assessments are made "behind closed doors" in conjunction with other Ministers who have portfolio responsibility for the proposal. A statutorily based independent EPA, however, would not be subject to the same accusation and would be able to access sufficient administrative resources to undertake efficient and effective environmental impact assessment. An EPA should therefore be established and given the Minister's current powers to (1) decide which proposals should be assessed and (2) what level of assessment should apply.

Just as the OEH does now, the EPA should prepare a report on the environmental impact of proposals which are being formally assessed. However, unlike the OEH, the EPA should be given sufficient resources to carry out its own investigations of the potential impact of the proposal where the proponent's own documents are deficient. The EPA would then have sufficient information to prepare a recommendation about whether the proposal should go ahead, and if so, what conditions should be placed upon it to protect the environment .

Having an independent EPA involved in the environmental impact assessment process would remove the potential for the impact assessment process to become tainted by the perception of conflicts of interest. As noted above, the current OEH is part of the DIPE, other divisions of which undertake development and management projects. When those projects have a significant impact on the environment, the OEH is involved in assessing them. This automatically involves the DIPE in a conflict of interest – being both the proponent and regulator of a particular project. Having an independent EPA carry out the assessment would remove this conflict of interest and enhance public and industry confidence in the environmental regulatory system in NT.

One of the most important roles of environmental impact assessment is to ensure that the cumulative impacts of all of the development and land/sea management in a region be considered . However, individual environmental impact assessments will usually deal primarily with the impacts of their specific proposal, and in a more cursory fashion with the cumulative impact the proposal will have when combined with other developments and management schemes in the area. This is not always due to poor environmental impact assessment preparation, but rather can simply be the result of the fact that the developer or manager does not have sufficient information about the other developments in the area to properly assess the cumulative impact. This is particularly the case where other developments are planned but not yet established. The only person with sufficient information about all the development in a region, and therefore the only person who can properly assess the cumulative impacts of proposals, is an environmental regulator such as the EPA.

Examples where a well-resourced, independent statutory environmental impact assessment system administered by an EPA could have prevented, or could still prevent, environmental problems include:

- Proposals for further broadacre land clearing, irrigated agriculture and water extraction in the Daly River catchment.
- Assessment of the Tiwi Island Barramundi Cage fish farm developed in 2001 would have allowed some scrutiny of the potential environmental impacts associated with the project.
- An updated assessment of the Darwin to Alice Springs Railway (the previous assessment was completed in 1982) may have averted the clearing of important

Gouldian Finch (a nationally listed endangered species) feeding grounds in 2002.

- Many pasture improvement grasses have been introduced into NT which have escaped into the environment and become weeds. In most instances there were no environmental impact assessments carried out with respect to the grasses before they were introduced. Had such assessments been carried out, they would have identified either that the grasses would have such virulent impacts they should not be introduced at all, or that they should only be introduced within a particular environmental management regime.

#### 5.4 Involvement in decisions about developments and management schemes

Once environmental planning has been done, environmental regulation reaches the development decision stage. This is the stage at which the specific environmental impacts of a development or management scheme are considered and a decision is made about whether those impacts are acceptable and therefore whether the development or scheme should go ahead or not.

In the cases where an environmental impact assessment is carried out, the EPA will produce a report and recommendation about whether the proposal should go ahead or not. At present, the Minister sends any such report to the agency/Minister responsible for the proposal (for example, the Minister for Mines who issues mining leases, the Minister for Lands who manages pastoral leases and Crown land, PWCNT who manage parks, the Development Consent Authority or Minister who issues approvals under the Planning Act). That agency/Minister then has sole discretion as to whether or not to adopt the report. If it decides not to adopt it, the proposal may well go ahead without any conditions which protect the environment, in which case the entire impact assessment process has been futile. To avoid this, the agency/Minister which is responsible for approving the proposal should be required to act in accordance with the EPA's report and recommendations unless it produces written, publicly available reasons for its decision. There should then be a process where any person can appeal from that decision. This will ensure that the outcome of the environmental impact assessment process is transparent and accountable.

Obviously a formal environmental impact assessment process will only apply to individually significant proposals and will not be undertaken in respect of every new development. However, even proposals which are not subject to a formal assessment process have some impact on the environment and therefore some consideration needs to be given to the what conditions should be put on them in order to protect the environment. However, the Minister/agency with responsibility for the proposal often does not have sufficient environmental expertise to give this issue adequate consideration, or even the statutory responsibility to consider environmental issues. Still less do they have the ability to consider and assess the cumulative impact of other developments/schemes in the area, especially other development/s schemes which are not in their jurisdiction/portfolio.

An EPA could therefore assist even when no environmental impact assessment is prepared by being given the power to consider the environmental issues about the proposal and prepare a report recommending the environmental conditions which should be placed upon the proposal. The EPA could develop standard conditions so that this recommendation process does not unduly delay proposals. Similarly to above, the Minister/agency should be required to adopt the EPA's recommendation unless they prepare written, publicly available reasons for not doing so. Appeals should be available from that decision. These measures will ensure that environmental matters

are given appropriate consideration and weight in all decisions about developments and management schemes.

The only specific environmental approvals which are currently required in the NT are licences under the Waste Management and Pollution Control Act for development of landfills servicing the waste disposal requirements of more than 1000 people. The EPA, as the expert environmental regulator in NT, should become the administrator of this licensing system. The EPA should also be given the responsibility to investigate whether licences under this Act should be required for any other developments, and if so, administer those licences.

Examples of where an EPA's involvement in the development/management scheme decision making process could have prevented environmental problems include:

- Damage to mangroves resulting from development at Bayview Haven and Cullen Bay real estate and marina developments.
- Damage from mining operations with inadequate rehabilitation requirements could be prevented by environmental conditions placed on the projects at the start.

## 5.5 Monitoring

Ongoing environmental and development monitoring is vital for two reasons . Firstly, it is necessary to establish whether the conditions placed on the development have been complied with (for example, to determine whether waste water discharge limits are being met, or whether water allocations are being exceeded) . Secondly, it is necessary because of the inherent difficulty in accurately predicting environmental impacts. Only monitoring can establish whether or not the impact assessment was accurate or not, and whether or not the management of the impacts is sufficient. If either the assessment was not accurate or the management is not appropriate, only monitoring will reveal the problem in order that it may be addressed and mitigated.

There are several approaches which can be taken to monitoring. These include:

- an environmental agency conducting the monitoring and recouping the costs from the developer (most reliable and most resource intensive);
- a developer being required to pay an independent consultant accredited by the agency to undertake the monitoring (mid level reliability and resource intensity);  
or
- a developer undertaking the monitoring itself and providing the results to the agency (least reliable and least resource intensive).

Regardless of the approach taken, an environmental agency must have sufficient resources and expertise to analyse and interpret the monitoring results, and to develop mitigation responses if the monitoring reveals unexpected environmental impacts. This means that an agency such as an EPA is required to develop and implement monitoring approaches and systems.

Examples of where EPA involvement in monitoring could have prevented, or could still prevent, environmental problems are:

- Contaminated water releases from the McArthur River, Ranger and Alcan mines.
- Diesel leaks at the GEMCO mine on Groote Eylandt from 1992 to 1995.
- There is currently no monitoring of landfill sites and rubbish dumps across the NT. Licensing without monitoring is improper.

## 5.6 Enforcement

Most of the NT's environmental laws rely on what environmental law academics commonly call a "command and control" type system, in which a limit is supposed to be set on the release of a pollutant into the environment and penalties should apply if the limit is exceeded. It is widely recognised that command and control regulation is only effective where there is a credible enforcement threat. In circumstances where people do not believe they will be "caught" or penalised (for example, for breaching the pollution limit), the law will not act as any deterrent against causing environmental damage, and people may well act with disregard for the law. This has several problems:

- the environment will be harmed by the unlawful pollution.
- the public quickly become disillusioned with environmental regulation which is not enforced and will not believe that the government is actually doing anything to protect the environment.
- those people who do the "right" thing and comply with the law by using resources to obtain the appropriate pollution control equipment and adopting environmental management systems suffer a competitive disadvantage by comparison with those who don't.

It is therefore vital that any environmental law have a credible deterrent threat associated with it. This requires an environmental regulator such as an EPA which has the statutory power, the expertise and the resources to properly conduct investigations for breach and to take appropriate enforcement action. The regulator must also be experienced enough to properly consider and undertake an array of enforcement action, from written warnings and infringement notices in minor cases to prosecution in serious cases. As enforcement action must include the possibility of taking serious steps such as suspending development approval or prosecution, the environmental regulator must be sufficiently robust to withstand the political pressure which is usually brought to bear in order to forestall such enforcement action .

The EPA should have the power to bring prosecutions for any breach of any Act which results in environmental damage (for example, a breach of the Mining Act or the Planning Act). The agencies that currently have the power to bring prosecutions for breaches of approvals, for example, for breach of mining approvals or development approvals, have usually been involved in issuing the very approval which has been breached. They are therefore necessarily in a conflict of interest when they are put in the position of having to consider whether or not to prosecute a breach of that approval. In some cases, the agency may be so aligned with the industry that they could be said to have been "captured" by it. This conflict of interest or capture often means they are not always the appropriate person to consider whether to take enforcement action or not. When a breach results in environmental damage, however, an EPA would be ideally independently placed to consider whether to prosecute or not.

In order to investigate whether to bring any enforcement action or not, the EPA must have appropriate powers to require the production of information, to carry out inspections, to conduct monitoring etc.

- Examples of where an EPA with the ability to carry out enforcement action could have prevented environmental problems are:
  - Clearing at Wickham Point in 2003
  - Clearing of Gouldian Finch habitat associated with railway in 2002
  - Ranger leaks in 1999 and 2002
  - McArthur River mine leaks in 2001

- Cyanide dumping incident on the Tanami Highway in March 2002

## 5.7 Registry of Information

One of the important roles of any environmental agency is to act as a register of public information. Currently in the NT, public information registers include things such as the NT Coastal Resources Atlas, the public Register of Environmental Impact Assessment, and the Waste Management and Pollution Control Register. An up to date and informative register is an invaluable tool for industry as it provides them with information about existing developments and environments. It also provides important information to the public about the environment in which they live. The utility of an information register is maximised if it links information together, so that it is immediately clear what environmental regulation applies to a particular development or environment. An environmental regulator such as an EPA could not only maintain the registers, but could also establish the linkages between the information so that the various registers provide information in the most efficient way.

## 5.8 Facilitate community involvement

The benefit of involving the community in environmental decision making has long been recognised. Benefits include:

- It leads to a greater acceptance of developments.
- It provides access to a wealth of local knowledge about the local environment.
- better risk management.
- It is integral to sustainable development.
- It can reduce delays and the cost of redesigns, enforced negotiations and even possible litigation resulting from widespread community opposition.
- It can indicate at an early stage that a project may not be feasible.
- It can reduce some of the uncertainties in the approvals process by identifying and addressing possible contentious issues at an early stage.
- It can identify potential negative social impacts of the proposal and allow the rapid development of strategies to mitigate these.
- It can reinforce legitimacy in the decision-making process.

Limited community involvement is currently permitted in both the development control and environmental impact assessment processes. However, merely permitting community involvement is not sufficient to ensure that the benefits of it are realised. Community involvement must actually be sought, supported and fostered. Facilitating community involvement therefore requires the expertise and resources that an environmental regulator such as an EPA can provide. And law reform is required to provide that community consultation is adequate and compulsory, rather than cursory and optional.

Examples in the NT of where an EPA who facilitated community involvement could have reduced environmental problems include:

- Greater consultation in relation to aquaculture developments could have prevented resource conflicts over proposed prawn farm at Shoal Bay.
- Community consultation could have averted resource conflicts in the Daly Basin.
- The current project to develop the Darwin Wharf arena has little real community participation in the process of developing options for how the project should look and what impacts it might have.

## 5.9 Voluntary Initiatives

As noted above, most of the NT's environmental laws rely on a "command and control" system of regulation in which a specific environmental standard is determined and then enforced. Although important, such regulation is not sufficient on its own as it tends to lead to developers aiming to operate at a level just above the minimum environmental standard, rather than aiming to operate at their optimum level .

It is therefore necessary for an environmental regulator to operate programs which encourage developers to voluntarily meet compliance standards and to even go "beyond compliance". Voluntary initiatives are also important to regulate areas where traditional command and control is ineffective. For example, land degradation is often not caused by any single pollutant or specific activity – it is caused by the many impacts of diffuse users. It is therefore difficult for command and control type regulation to set a standard to control the environmental harm, let alone enforce the standard against someone.

An example of voluntary initiative schemes which are operated by environmental regulators include agreements with landholders to protect their land in return for some financial assistance or public recognition. Another example is sustainability covenants, which are agreements between an industry, regulator and community about how to manage an industry so it is sustainable in the long term. These agreements provide industry with the long term regulatory stability which is crucial for optimal business planning, and provide the regulator and the public with pollution standards which are beyond what is currently required by the law . Other examples of voluntary initiative schemes in Australia include industry waste reduction agreements, environmental improvement plans, environmental management systems and conservation covenants.

NT's current focus on command and control regulation means that it currently has very few voluntary initiative schemes. Consequentially there is little assistance or encouragement for developers to move beyond compliance, and little progress in the regulation of environmental issues such as land degradation which do not respond well to command and control type regulation. An environmental regulator is necessary to develop NT specific voluntary initiative programs, then to monitor their effectiveness and to review them as necessary.

Examples of where an EPA with the ability to implement voluntary initiative programs could have prevented environmental problems are:

- agreements with land users to conserve biodiversity on their land.
- agreements with developers to encourage environmentally friendly commercial and residential buildings.
- development of on-farm environmental management systems in pastoral areas.
- fisheries by catch reduction.

#### 5.10 Environmental economic instruments

Environmental economic instruments are an important part of the environmental regulation tool kit. They are instruments which produce either a financial reward or penalty depending on the degree of environmental harm caused by a particular activity . Most economic policy initiatives are designed to focus on "front of pipe" improvements to reduce resource use or improve the efficiency of its use in the first place, rather than focussing on reducing "end of pipe" pollutants. Economic instruments include performance bonds, deposit refund systems and the creation of markets for the trading of rights to use or pollute to an environmental good, such as air or water . Economic

instruments can also include diffuse regulation by influencing the behaviour of financial institutions such as banks, project financiers and insurance companies. The advantage of using economic instruments is that they give firms great flexibility in tailoring responses to their individual circumstances, thereby achieving the most efficient form of regulation. And because of the flexibility they provide, many firms respond well to economic incentives and reduce environmental damage accordingly.

While environmental economic instruments programmes' success depends upon their allowing firms the flexibility to achieve environmental objectives without prescription by an environmental regulator, the programmes still require a strong regulatory underpinning to discourage abuse of the system, and to adequately punish those who thwart the objectives of the programmes. And economic instruments such as trading systems require additional input from an environmental regulator, due to the fact that the trading systems require a regulator to establish a market for the trading to take place in the first place.

There are currently very few environmental economic instruments operating in the NT. However, the importance of these will increase as firms begin to pressure the NT to include economic instruments as part of its environmental regulatory mix. An environmental regulator in the NT is therefore necessary to develop economic instrument programmes. Once these programs are developed, the regulator will need to enforce breaches of the instruments (e.g. those which pollute more water than they have bought a tradable water entitlement for). The regulator will also need to liaise with firms to monitor the effectiveness of the programmes and review them as necessary.

Examples of where an EPA with the ability to implement develop economic instruments could have prevented environmental problems include:

- trading in water entitlements could, if properly set up, ensure that water is used more efficiently. Indeed, the need for the development of a water trading system was one of the key recommendations of the Council of Australian Governments (COAG) Water Resources Policy and Reform group.
- incentives to reduce greenhouse gas emissions (e.g. lower registration for smaller cars; carbon credit trading).
- buy-back of fishing licenses.

### 5.11 Education

Education and training are essential to improving the capacity of industry and the community to address pressing environmental issues. Education is critical in changing attitudes and behaviour with respect to the environment and is an invaluable tool when used in association with another form of environmental regulation, such as command and control or voluntary initiatives.

While it is recognised that educational instruments generally deliver improved management practices, they are most effective when the education is specifically targeted at the intended audience. For example, education about biodiversity loss works best when targeted at those involved in land clearing. An environmental regulator such as an EPA is therefore necessary to develop educational programs to compliment its other regulatory initiatives.

Examples of where an EPA with the ability to carry out educational programs have prevented environmental problems are:

- educating the community about the impacts of urban air pollution caused by car use.
- educating farmers about the impacts of clearing on biodiversity and productivity.

#### 5.12 State of the Environment reporting

“State of the Environment” reports describe the condition of the environment in an area, the main pressures affecting it, and management responses to protect, enhance and restore the quality of the environment. The reports are produced in each State, usually on a regular basis of between 3 to 5 years. Such reports are vital to give government, developers and the community accurate information about the state of the environment, the pressures to which it is subjected and the values embodied by it.

In order to prepare a State of the Environment report, NT specific environmental indicators must be developed to measure the state of and pressures on the environment. Environmental indicators range across a range of environmental measures. In order to be useful, these indicators must be scientifically sound, easily understood, show trends over time, be sensitive to the change they are designed to measure, and be based on readily available up to date data.

While some SOE reporting has been done in the NT in the past (for example, the Biodiversity Unit in DIPE has done work on terrestrial biodiversity) only a body such as an EPA will have the extensive knowledge about the whole of the NT environment necessary to develop appropriate NT specific environmental indicators and to prepare a comprehensive State of the Environment report. In addition, only an EPA would have sufficient resources to undertake the significant task of undertaking State of the Environment reporting.

#### 5.13 Audit other government institutions

As noted in the introduction, this submission does not deal with the day-to-day operations of existing environmental institutions or mechanisms which are established in the NT to deal with such matters as national parks, mining, pastoralism and fishing. However, it is important to note that an environmental regulator such as the EPA should have the role of auditing the environmental performance of those institutions, as well as having an overall cross-disciplinary co-ordinating role. By doing so the EPA envisaged in this submission can make the work of other departments and other sectors of government more efficient and more effective while instilling greater public confidence in whole-of-government environmental performance.

For example, any activities occurring in a national park must be carried out in accordance with the plan of management. However, there is no transparent formal process to monitor when those plans of management are created, when they are reviewed, or if they are being complied with. Neither is there any transparent formal process to determine whether the plan actually results in environmental protection. An EPA could carry out these activities.

In respect of fisheries, the Department of Primary Industries and Fisheries (PIF) and Parks and Wildlife Commission of the Northern Territory (PWCNT) have an agreement detailing the working arrangements for management of aquatic life in marine and freshwater environments within parks. Under the terms of this agreement, management of wildlife, habitats and ecosystems rests with the PWCNT while the taking of aquatic life, particularly fish and invertebrates, for commercial and recreational purposes is managed by the DPIF. There is no formal process to monitor whether this agreement is achieving environmental goals – an EPA could do this.

Crown land may be reserved for recreation, wildlife or the preservation or protection of places of historic interest. However, currently there is no requirement for management plans to be drawn up in respect of such land, and so no structure to ensure that the land is managed in accordance with its reservation. An EPA could be given the responsibility to develop and implement plans to protect the environment on Crown land which is reserved for environmental purposes. An EPA could also audit major legislative landholders in the NT such as the Northern Territory Land Corporation and the Conservation Land Corporation.

An EPA could also advise upon or coordinate activities with other government agencies whose decisions impact upon the environment. For example, the EPA could provide advice during the PWCNT Master Plan process for enhanced biodiversity conservation strategies, or could consider the environmental impacts of whole of government purchases and develop a green purchasing policy for government.

#### 5.14 Sustainability

The NT government has committed to implementing sustainable development of natural resources. Sustainable development requires the thorough consideration of economic, social and environmental matters. If the information about the environment is incomplete or is not properly understood, it will be impossible to adequately consider the environment and therefore impossible to achieve real sustainable development. An environmental agency such as an EPA can provide the necessary information and analysis about the environmental impacts of developments. It is only then that there is an opportunity for the NT to lead the world in achieving real sustainable development.

## 6. Structure of the EPA

From the discussion above of the shortcomings of the present primary regulator in the NT and the functions that an environmental regulator must carry out in order to protect the NT environment, it is clear that a new environmental regulator such as an EPA is essential in the NT. However, what should that EPA look like?

### 6.1 EPAs across Australia

This submission has so far used the term EPA interchangeably with environmental regulator. However, across Australia the term “Environmental Protection Authority” is used to describe various different environmental regulators with differing constitutions and responsibilities. This submission will now summarise the structure and role of the various EPAs which exist across Australia.

#### 6.1.1 New South Wales

The NSW EPA is a statutory public sector agency. The EPA carries out various statutory functions such as operational and licensing decisions, as well as non statutory functions such as research. Specifically, the EPA is involved in:

- environmental education
- environmental research
- environmental policy setting and statutory reform
- developing economic instruments
- regulation, primarily through licences
- administering grants
- State of the Environment reporting
- enforcement

The EPA also supports a number of statutory committees, including the Load-based Licensing Technical Review Panel, NSW State of the Environment Advisory Council, NSW Council on Environmental Education and the Site Auditor Accreditation Panel. The Director-General of the EPA is directly accountable to the Minister for the Environment.

The EPA has an independent statutory Board with expertise in environment protection, agriculture, industry, environmental science, regional issues, law and local government. The Board's role is to provide strategic direction to the EPA, to develop environmental policy and to make key decisions on enforcement. It also includes the Director-General of the EPA.

Most environmental impact assessment in NSW is carried out at the local level by local government. However, environmental impact assessment for large scale developments is carried out by the Department of Infrastructure, Planning and Natural Resources. Environmental impact assessment of development proposals by government are also carried out by this Department.

Planning at State and Regional levels is undertaken by the Department of Infrastructure, Planning and Natural Resources. Planning and development control at a local level is undertaken by local governments.

#### 6.1.2 Victoria

The Victorian EPA is a statutory agency. It is governed by an independent Board which is empowered to advise the Minister and the Authority on the administration, functions, policies and strategic directions of the Authority, the Authority's corporate plan and national and international trends in environment protection. The Board comprises three members with scientific community and business expertise. The EPA is involved in most of the functions set out in section 3.

#### 6.1.3 Queensland

The Queensland EPA is a non statutory government department. It has separate divisions for environmental impact assessment, policy development and environmental planning. It carries out research and education, and is responsible for issuing some environmental approvals and conducting enforcement activities. It is also responsible for State of the Environment reporting.

Local government are involved in local area environmental planning and some environmental impact assessment, as well as local development control.

#### 6.1.4 South Australia

The Environment Protection Authority in South Australia is a statutory government agency. It prepares environmental protection policies, carries out environmental impact assessment of major projects, issues environmental approvals and is involved in enforcement activities. It also implements voluntary and education programmes.

The EPA is governed by an independent Board constituted by members with experience in environmental protection, industry, waste management, law and the public sector. It also includes the CEO of the EPA.

Each year the EPA is required to hold a round table conference. At this conference participants from the general community, industry and government agencies join members of the Board to discuss the management of the environment in South

Australia, to comment on the current approach and activities of the EPA, and to suggest improvements.

Most local area planning and development control is carried out by local government.

#### 6.1.5 Tasmania

Tasmania does not have an EPA. Rather, most environmental regulation is carried out by the Department of Primary Industries, Water and Environment. The Director of Environmental Management within this Department has responsibility for most areas of regulation.

Tasmania also has a Board of Environmental Management and Pollution Control. The Board is an independent statutory body. The functions of the Board are to administer and enforce the provisions of Tasmania's primary environmental legislation, and in particular, to use its best endeavours:

- To protect the environment of Tasmania;
- To ensure the prevention or control of any act or emission which causes or is capable of causing pollution;
- To co-ordinate all activities, whether governmental or otherwise, as are necessary to manage the use of, protect, restore or improve the environment of Tasmania; and
- To ensure that valuation, pricing and incentive mechanisms are considered in policy making and programme implementation in environmental issues.

The Board also undertakes the assessment of major projects. Board members include representatives from Government, industry and the community.

#### 6.1.6 Australian Capital Territory

The EPA in the ACT is a statutory body. It is responsible for some environmental authorisations, enforcement and for voluntary environmental agreements. Environmental impact assessment is carried out by the Minister with the assistance of the EPA.

#### 6.1.7 Western Australia

Western Australia's system is unique in Australia in that it has both an EPA and a Department of Environment (DOE).

The EPA is a five person independent statutory body. It is responsible for conducting environmental impact assessments on major projects in WA, for preparing environmental protection policies and for advising the Minister for the Environment on environment matters generally. It also prepares State of the Environment reports. Although the EPA itself is independent, it receives support from the EPA services unit within the DOE.

The DOE is a non statutory public sector department, though the Chief Executive Officer of the DOE is a statutory position. The DOE is responsible for issuing environmental approvals and land clearing permits, and enforcement. It also plays some role in developing voluntary initiative schemes, economic instruments, and education.

## 6.2 Structuring an EPA for the NT

The discussion in earlier sections of this submission highlighted that it is essential for an environmental regulator to have appropriate expertise, experience and an understanding of NT wide environmental issues. It should also have sufficient resources to carry out its activities in a consistent and thorough manner. The models of

EPAs in Australia discussed in section 6.1 reveal that it is commonly accepted that an EPA should be an independent agency, have an independent board, have a statutory basis, and formal accountability. This submission now explains why of these attributes are important and how they can be attained.

#### 6.2.1 Independent Agency

Given that many of the problems with environmental regulation in the NT are due to the fact that the OEH is a division of the DIPE, it is vital that the EPA itself be an independent agency. Only an independent agency will have the necessary accountability, resources, freedom from political interference and separation from potential conflicts of interest to enable it to operate as a best practice environmental regulator. While it may be thought that efficiencies may be able to be gained by combining some of the activities of the EPA with, for example, some of the activities of the Parks and Wildlife Commission or with the heritage conservation responsibilities of DIPE, it is in fact the current OEH's association with other government agencies which is responsible for much of the current dissatisfaction with it. The EPA must therefore be independent and separate from these agencies. This is particularly so if the EPA is to undertake an auditing function in respect of other agencies and statutory corporations – as it is a fundamental principle of auditing that the auditor is independent of the person being audited.

#### 6.2.2 Independent Board

Most State's EPA's have an independent statutory board. The Board's role is to carry out some of the functions of the EPA as well as providing overall strategic direction to the EPA. A similar Board should be established in NT.

The independence of the Board of any NT EPA is vital if the EPA is to establish public and industry confidence in environmental regulation in NT. It is also necessary if the EPA is to properly audit the functions of other government agencies. Independence must be assured in several ways. One is that the Board must be immune from Ministerial direction. The Minister should not have any power to override the EPA Board or to direct it to make particular decisions. Another is that the Board should be constituted by various non government experts who have expertise in the respective fields of environmental protection/conservation, environmental management, community representation, industry environmental issues, rural issues, Indigenous issues and law. The CEO of the EPA should also be a Board member. Vacancies on the EPA Board should be formally advertised, rather than just filled by a Minister. Appointments should be made by a committee representing conservation, government and industry interests.

#### 6.2.3 Statutory basis

It is vital that any EPA established in the NT have a statutory basis. This is the only way in which to ensure that parliament must approve any change to the constitution of the EPA. It is also the best way to give the EPA the degree of permanence and stability it needs to build the necessary expertise and experience in environmental regulation. Permanence will also give the EPA the ability to form working relationships with both industry and community. Finally, permanence is necessary to ensure that the EPA has the time to develop, implement, monitor and review the educational, economic and voluntary environmental programs which the NT could benefit from.

#### 6.2.4 Objects

Just as the EPA requires a statutory basis, it requires statutory objects. Objects are important to any legislative body, as it is the objects which give it direction and confine the exercise of its discretion. The objects of the NT EPA must guide the decisions and

programmes which it makes, as well as provide it with overall strategic direction and underlying principles. The objects of the NT EPA should include:

- Ecologically sustainable development
- Conservation of biodiversity
- Intergenerational equity
- Polluter pays
- Precautionary principle
- Waste and resource use minimisation
- Full life cycle analysis

#### 6.2.5 Statutory functions

As noted in section 2, the OEH does not have any formal statutory functions. This means its functions can be amended at any time by mere executive action. However, the reliance which government, industry and the community place upon the performance of those functions mean that they should be enshrined in statute. This is the only way in which to ensure that it is clear who is responsible to perform those functions and therefore who is accountable if those functions are not adequately performed.

Rather than specifying simply that the EPA has some statutory functions, most jurisdictions in Australia specify that the CEO/Director of the EPA (and therefore the agency headed by that CEO) has particular functions, and the independent Board of the EPA has other functions. This model should be followed in the NT, with the following functions being ascribed:

##### 6.2.5.1 Functions of the EPA Board

- Environmental planning and policy development and review;
- Environmental impact assessment decisions, advice and recommendations;
- Enforcement action;
- Audit of other government institutions;
- Recommendations for law reform.

##### 6.2.5.2 Functions of the CEO/Director of EPA

- Support for the Board and any specialist environmental bodies;
- Monitoring and investigations;
- Licensing (for example, under the Waste Management and Pollution Control Act);
- Environmental plan and policy implementation;
- Educational programmes;
- Voluntary initiative and environmental economic instrument programmes;
- Registry;
- State of the Environment reporting;
- Management plans for Crown land;
- Facilitating community involvement.

Some functions need not be statutorily prescribed and may be carried out by either/both the Board and the CEO/Director, such as liaison with Commonwealth and State environmental agencies, representing the NT government on various Councils and committees, etc.

### 6.2.6 Accountability and Transparency

If government, community and industry are to have confidence in the NT EPA, there must be mechanisms established to ensure that the EPA is accountable for its actions. These mechanisms should include:

- Having the EPA prepare an annual report of its actions
- Having the independent Board prepare an annual report of its actions
- Having an annual roundtable where the general community, industry and government agencies join with the EPA to discuss the management of the environment, to comment on the current approach and activities of the EPA, and to suggest improvements.
- Having the EPA prepare written, publicly available reasons for its decisions and recommendations. (One of the most effective mechanisms to ensure that an agency's decision is sound is to require it to provide reasons for its decision ).

### 6.2.7 Separate divisions

As noted above, government agencies with responsibility for both issuing approvals and taking enforcement action in respect of breaches of those approvals necessarily become entwined in a conflict of interest. In order to ensure this does not happen in respect of the EPA, the EPA should be constituted in separate divisions. Those divisions should be:

- Auditing, monitoring and enforcement (including support for the EPA Board's functions in this regard)
- Assessments
- Approvals
- Education, voluntary initiatives and economic instruments
- Planning and policies
- State of the Environment reporting

Regional offices can deliver services efficiently and can best utilise local knowledge and relationships. Regional offices will also be in the best position to utilise the knowledge and expertise of, and provide the necessary support to, remote Aboriginal communities. The EPA should therefore aim to deliver many of its services through regional offices. However, a central EPA office will still be necessary to coordinate its activities and to ensure that the regional offices do not become too close to those they are regulating and therefore subject to the same "regulatory capture" which this submission contends that some other government regulators may be subject to.

### 6.2.8 Proper resourcing

Obviously the EPA will need to have adequate resources in order to carry out the functions described in this paper and operate as a world's best practice environmental regulator. Those resources include funding, expertise and experience.

#### 6.2.8.1 Funding

To ensure that this funding is adequate, the following mechanisms should be put in place:

- Assessment should be done on a cost recovery basis whereby developers must pay for the time that the EPA spends on assessing their development proposals.
- Licence and development approval fees should factor in the cost of the environmental degradation which the approved development results in ("load based" fees).

- Monitoring or other services done by the EPA should be done on a cost recovery basis
- The EPA should not be expected to operate on a cost neutral basis – i.e. it should be recognised that the EPA will always operate on a deficit
- Fees, charges and fines collected by the EPA should be allocated to its budget, rather than to general revenue
- Environmental bonds should be required from developers, and the interest on these allocated to the EPA's budget.

It should be clear that funding for EPA activities is generally in addition to, and not instead of, funding for other government and non government environmental activities.

#### 6.2.8.2 Expertise

New industrial processes are continually developing, and thus new pollutants, as well as new combinations of pollutants, are being produced. At the same time, knowledge about the environment and ecological systems in particular is increasing. The constant advance in technology and knowledge has significant ramifications for designing any environmental agency, as to be effective that agency must both:

- understand technological processes, and
- understand ecological systems.

In addition, the agency must understand the impact of those technological processes on ecological systems, as it is that impact that causes environmental damage. The agency must therefore have expertise in both areas, and more importantly, in the relationship between the two areas.

The continual advance in technology has another important consequence for designing an environmental agency. That agency must not only control known problems, but anticipate new ones and endeavour to prevent them from occurring. This requires significant expertise.

#### 6.2.8.3 Experience

An important role for any environmental regulator is to provide advice to developers about how to modify a project so it has less impact of the environment. The agency therefore needs to be staffed by knowledgeable people who have sufficient experience to engage and advise developers.

Environmental problems often cannot be corrected overnight. Yet it is often not feasible for a development to cease operation immediately pollution is produced. Therefore the reality is that extended, bargaining type relationships inevitably develop between an EPA and a developer in order to work out the best way to deal with the environmental problem. This relationship can rapidly become unbalanced and secretive if the regulatory staff are not experienced enough to deal with the developer. It is therefore essential that EPA staff are experienced.

## 7. Environmental appeals system

While the establishment of an EPA would dramatically increase the effectiveness of environmental regulation in NT, there will be a need for appeals in relation to environmental decisions. An appropriate appeals system is essential here, as in other areas, to ensure that environmental decisions are free from factual error, irrelevant considerations, bias and other issues which bring environmental regulation into

disrepute. An appeals system is also a fundamental part of any democratic system of government and provides the “check and balance” which is necessary to control executive action. A robust appeals system should ensure a robust environmental decision making system .

The main appeal currently available in respect of environmental approval type decisions is a developer only appeal against a Development Consent Authority’s decision about a development permit. This is problematic because:

- The fundamental objective of an appeals system is to correct errors in the original decision. A developer-only appeals system means that only errors associated with a rejection of a development are corrected. Errors associated with the approval of a development are not. This defeats the purpose of the appeals.
- A developer-only appeals system excludes parties who have a legitimate interest in environmental decisions. This undermines public confidence in environmental regulation.
- A developer-only system introduces bias into the decision making process. Decision makers know that if they refuse an application they can be taken on appeal. In the absence of a countervailing right of appeal against the grant of an application, a bias is introduced into the system.

Environmental decisions should therefore be open to appeal by both developers and those people or groups who can demonstrate they have a legitimate interest in the protection of the environment which the development will affect. Appealable decisions should include:

- EPA’s decisions about whether to assess a proposal;
- EPA’s decision about what level to assess a proposal at;
- EPA’s report and recommendations about proposals;
- Relevant agency/Minister’s decisions about proposals.

This will ensure the necessary check and balance on the environmental decisions of these agencies.

In order to determine whether or not they have any reason to appeal a decision, people must be provided with the reasons for that decision. Therefore the EPA and other Minister/agency must be required to prepare written, publicly available reasons for their decisions. This is the only way to ensure that the appeal rights can actually be considered and, as necessary, exercised.

## **8. Staged introduction**

Constituting and resourcing an EPA will necessarily take time and resources, and it will therefore probably be necessary to stage its introduction. We submit that the most important first step will be to appoint the independent EPA Board. Once the Board is established, it will be in the best position to evaluate the state of the NT environment and therefore determine at a strategic level how the remainder of the changes necessary to establish the EPA as envisaged in this submission should be implemented.

Given their experience in working in the area of NT environmental regulation, obviously many of the staff of the OEHL will be able to be utilised by the new EPA. In addition,

some of the staff from the Conservation and Natural Resources Division of the DIPE, particularly those experienced in environmental and natural resource planning, could also be employed by the EPA. However, more staff will be required if the EPA is to carry out the activities referred to in this submission, and it will not be sufficient to simply re-name the OEI as the EPA. A sea change in the environmental regulatory institutions in NT is required.

## **APPENDIX 1**

### Summary of some law reform required to implement an EPA

The following is a summary of some of the law reform which will be required to constitute an EPA. Other incidental reform will also be required, for example, to provide for an independent environmental appeals system from all development and management scheme decisions.

#### New: an Environmental Protection Authority Act

1. The Act must establish the EPA and the EPA Board as a separate, independent agency
2. The Act must specify the objects of the EPA (see 4.2.4)
3. The Act must specify the areas of expertise of Board members and the manner of their appointment (see 4.2.2)
4. The Act must specify the functions of the EPA and the powers of the EPA (see 4.2.5)
5. The Act must specify the immunity of the EPA from Ministerial direction
6. The Act must require the EPA to prepare an annual report and hold an annual round table
7. The Act must bind the Crown
8. The Act must require the EPA to prepare written, publicly available reasons for all its decisions. It should also require the EPA to publish all its reports and recommendations in respect of environmental impact assessment.
9. The Act must enable environmental conditions to be put in place as part of all development decisions and management scheme decisions
10. The Act should provide that the decision making relevant agency or Minister must implement the EPA's recommendation unless it publishes written reasons for not doing so
11. The Act must provide that the EPA is to audit other government agencies and statutory corporations
12. Environmental bonds should be required for approved developments
13. The Act must specify that the EPA has the power to institute enforcement action in respect of a breach of any Act if that breach results in environmental damage
14. The Act must provide for third party appeals to an independent body from the EPA's decisions and reports and recommendations
15. Third parties should have the right to bring enforcement action in cases where the EPA does not choose to

#### ***Environmental Assessment Act Amendments***

16. The Minister's powers should be transferred to the EPA
17. The EPA should have the power to "call in" proposals for assessment, and any person should have the right to refer proposals to the EPA

18. The EPA should have the power to conduct its own investigations and require further information from proponents
19. The Act should include a list of matters/developments which potentially affect the environment and which must be referred to the EPA. It should be an offence to carry out an activity on that list unless 1) the EPA decides not to assess the activity or 2) until the EPA has carried out its assessment and the activity has received all the necessary approvals
20. The Act should allow for the EPA to recover the costs of carrying out environmental impact assessments
21. The Act should set out the factors which must be considered in assessments, including cumulative impacts and alternative sites
22. The Act should set out the community consultation required.

#### ***Waste Management and Pollution Control Act Amendments***

23. The EPA should be the administrator of this Act
24. Specified list of activities which need an approval or licence needs to be expanded to include all activities which carry an environmental risk
25. Third parties should have the right to bring enforcement action in cases where the EPA does not choose to
26. Licence fees should factor in the environmental costs of development

#### ***Crown Lands Act Amendments***

27. Management plans should be required for Crown land
28. The community should be consulted about management of Crown land

**ECNT POWERPOINT SLIDES - DARWIN PUBLIC HEARING 11 JUNE 2004**

Joint submission of

- ECNT
- ACF
- EDO NT
- AMCS
- WWF
- TSN

To the Sessional Committee on Environment and Sustainable Development Inquiry into the efficacy of an EPA for the NT

June 11 2004

**Government policy?**

- "Labor will establish an authority to protect the environment and administer the Environmental Assessment Act."
- "Labor will ensure that environmental impact statements, where required, are carried out by a body that is registered with an independent Government agency."

*NT Labor platform - As adopted at the Australian Labor Party NT Branch 2001 Conference (held 2002)*

- Current environmental assessment and regulatory body: The Office of Environment and Heritage

**(see flow chart)**

**The NT needs an EPA because...**

1. It is the responsibility of government to ensure that the environmental challenges the NT faces are **fully, transparently and effectively** addressed.
2. This requires a high level body
  - with **standing and authority**
  - able to provide **strong leadership** in setting environmental standards and improving environmental outcomes across government, industry and the community.

The NT needs an EPA because...

3. In order to retain public confidence in environmental protection measures, a **suitably resourced** body with a **high degree of statutory independence, transparency and accountability** is required.
4. Responsible development, including the industrialisation process now underway, requires:
  - **High quality strategically integrated environmental planning;**
  - **detailed independent** assessment and reporting;
  - diligent **monitoring and auditing** to ensure compliance with environmental obligations.

- Handout of latest gas plan media

The NT needs an EPA because...

5. Due to a combination of
  - rising public expectations,
  - changing obligations at a national and international level, and
  - increasing industrialisation pressures,
 any responsible environmental protection body in the NT faces an **increasingly large and complex work load, requiring significantly enhanced capabilities.**

The NT needs an EPA because...

6. The NT's existing serious environmental threats and degrading processes collectively require **sophisticated and integrated whole-of-government responses**, which in turn requires leadership from within government.

**The NT needs an EPA because...**

7. The current process of implementation, management and review of environmental components of various legislation is spread across many government agencies.

The core business of these agencies is not environmental protection and so this element of the legislation is overlooked or downplayed...

The NT needs an EPA because...

8. As a consequence, the environmental protection measures incorporated in pieces of legislation do not receive comprehensive and co-ordinated audit and assessment at review times.

Only a dedicated EPA can provide this comprehensive and integrated approach to environmental management and protection.

**EPA's in other states**

**New South Wales**

- The NSW EPA is a statutory public sector agency with an independent statutory Board.

**Victoria**

- The Victorian EPA is a statutory agency governed by an independent Board.

**Queensland**

- The Queensland EPA is a non statutory government department with separate divisions for environmental impact assessment, policy development and environmental planning.

**South Australia**

- The Environment Protection Authority in South Australia is a statutory government agency. The EPA is governed by an independent Board.

**EPAs in other States/Territories**

**Tasmania**

- Tasmania does not have an EPA. Rather, most environmental regulation is carried out by the Department of Primary Industries, Water and Environment.
- Tasmania also has a Board of Environmental Management and Pollution Control.

**Australian Capital Territory: Total budget ~\$3million p.a.**

- The EPA in the ACT is a statutory agency

**Western Australia: Total budget ~\$20million p.a.**

- Western Australia's system is unique in Australia in that it has both an EPA and a Department of Environment (DOE). Although the EPA itself is an independent statutory body, it receives support from the EPA services unit within DOE.

**The NT EPA would look like...**

The NT has the opportunity to put in place an EPA which accords with national best practice.

Such a body would have the following characteristics:

- Be an independent, stand alone, statutorily constituted agency with statutory objects and statutory responsibilities;
- Be governed by an independent Board;
- Have formal accountability;
- Be constituted in separate divisions to avoid conflicts of interest developing;
- Be adequately resourced (including appropriate funding and expert and experienced staff).

**The NT EPA would do...**

EPA functions:

- Environmental planning
- Environmental policy development
- Environmental impact assessment
- Monitoring
- Enforcement
- Provide a registry of information
- Facilitate community consultation
- Encourage voluntary initiatives
- Design environmental economic instruments
- Environmental Education
- State of the Environment reporting
- Audit other government institutions
- Implement sustainability

**Appeals**

Implementing such an EPA would also require the introduction of an environmental appeals system to provide a check and balance on the EPA's decisions and ensure a robust environmental decision making process generally.

**Appeals**

Appealable decisions should include:

- EPA's decisions about whether to assess a proposal;
- EPA's decision about what level to assess a proposal at;
- EPA's report and recommendations about proposals;
- Relevant agency/Minister's decisions about proposals.

### Staged introduction

- Constituting and resourcing an EPA will necessarily take time and resources, and it will therefore probably be necessary to stage its introduction.
- We submit that the most important first step will be to enact the EPA NT Act and appoint the independent EPA Board.

### Legislative changes required to create NT EPA...

- 1 A new Environmental Protection Authority Act:**
- establish the EPA and the EPA Board as a separate, independent agency.
  - specify the powers, objects and functions of the EPA
  - specify the immunity of the EPA from Ministerial direction.
  - bind the Crown.
  - require the EPA to prepare written, publicly available reasons for all its decisions.

### The new EPA Act (continued)...

- require the EPA to publish all its reports and recommendations in respect of EIAs.
- enable environmental conditions to be put in place as part of all development and management scheme decisions.
- provide that the relevant decision making agency or Minister must implement the EPA's recommendation unless it they publish written reasons for not doing so.
- provide that the EPA is to audit other government agencies and statutory corporations.
- specify that the EPA has the power to institute enforcement action in respect of a breach of any Act.
- allow third parties to bring enforcement action in cases where the EPA does not choose to.

### Legislative changes (continued)...

- 2. Environmental Assessment Act amendments**
- The Minister's powers transferred to the EPA.
  - The EPA given power to "call in" proposals for assessment.
  - Public ability to refer proposals to the EPA.
  - The EPA power to conduct its own investigations.
  - The Act to include a list of matters/developments which must be referred to the EPA.
  - The Act should set out the factors which must be considered in assessments, including cumulative and downstream impacts.
  - The Act to set out the community consultation requirements.

### Legislative changes (continued)...

- 3. Waste Management and Pollution Control Act amendments**
- The EPA should be the administrator of this Act
  - Specified list of activities which need an approval or licence needs to be expanded to include all activities which carry an environmental risk
  - Third parties should have the right to bring enforcement action in cases where the EPA does not choose to.
- 4. Crown Lands Act amendments**
- Management plans should be required for Crown land
  - The community should be consulted about management of Crown land

### Funding

- EPA funding considered an investment not a cost;
- Will end up saving government and community money by prevention or early intervention in problem areas;
- Budget small compared to government input into such things as Darwin Harbour development (\$100 m) or Litchfield NP road (\$53 m);
- Reallocation of part of gas industry subsidies (in lieu of carbon/greenhouse tax) e.g. Wickham road;
- Other incomes e.g. Container deposit legislation \$1-3 million p.a. income.

### Funding

- Assessment should be done on a cost recovery basis whereby developers must pay for the time that the EPA spends on assessing their development proposals.
- Licence and development approval fees should factor in the cost of the environmental degradation which the approved development results in ("load based" fees).
- Monitoring or other services done by the EPA should be done on a cost recovery basis
- The EPA should not be expected to operate on a cost neutral basis - i.e. it should be recognised that the EPA will always operate on a deficit
- Fees, charges and fines collected by the EPA should be allocated to its budget, rather than to general revenue
- Environmental bonds should be required from developers, and the interest on these allocated to the EPA's budget.



## SUBMISSION NO. 30(B)

**ENVIRONMENTAL DEFENDER'S OFFICE (NT) INC**

Mr Tom Cowen

*Principal Lawyer*

Delivered 11 June 2004

**Address to the Sessional Committee on Environment and Sustainable Development – Delivered During the Darwin Public Hearing**

This review has two fundamental goals:

The first is to answer the question -

What is the best way to achieve better environmental outcomes'?

This first goal is, rightly the focus of attention:

- will better environmental outcomes be achieved through changed, hopefully enhanced planning and management systems,

- Is an EPA the best way to achieve this?

I believe that Peter's presentation and our combined submission address that first goal so I won't say any more about that.

The second goal arises in response to the opportunity that this review presents. Succinctly put, the second goal is to create better legislative outcomes. I'd like to spend just a few moments talking about this prospect and turning the Committees' minds to this possibility.

What is meant by better legislative outcomes? As Peter pointed out and as our submission has described in detail the current legislative regime is disconnected, disordered in the way it deals with environmental protection and management. For example the Department of Infrastructure Planning and Environment is responsible for implementing over one hundred legislative instruments. Many, although not all, of these pieces of legislation regulate activities that may have an impact on the Environment. The DIPE webpage devoted to the environment lists 5 specifically, but there are many more regulated activities that have direct impact on the environment. Similarly other Departments are responsible for legislation that directly regulates activities that may have an impact on the environment. However, although these legislative instruments regulate activities that impact on the environment not all of them actually incorporate in their objectives or in the body of the instrument measures designed to protect the environment. Other pieces of legislation that regulate activities where the potential environmental impact is great only provide minimal environmental management or protection measures. For example the Pastoral Land Act, an Act that provides for the management of large tracts of Northern Territory land, looking at the map it seems to be over 50% of the Northern Territory - I am sure the relevant department could say precisely what the figure is this Act has only 3 references to environmental protection measures. One is within the objectives of the Act. The others refer, in general terms to conditions of the Lease and are couched in terms that make better environmental outcomes compliance easily avoidable. Now this is a piece of legislation that ought to have as a central core principle the protection of the environment and this is suggested in its objectives but not carried through into the body of the Act. An examination of the Act reveals that the Act is more about the administration of the Lease system and less about the environmental responsibilities and duties that being a custodian of the land warrants. In a busy Department that has a lot of other responsibilities and where the

environmental responsibilities are not front and centre of the legislation the protection of the environment may be overlooked or given second tier status.

So this review presents a golden opportunity to set the foundations to achieve a coherent body of legislation that has environmental management and protection as its core principle. It presents an opportunity to bring the body of legislation that deals with the environment into a logical and cohesive framework. I say set the foundations because the process will not be simple, easy or speedy. However it is the sort of task that can begin with the legislative instrument that creates, empowers and defines the role of an EPA. And it is the sort of task that an EPA should have the competence to and be required to carry on with.

We do not want to focus on the negatives, but as pointed out in the introduction of our submission it is the science that is telling us that there is a problem and the currency of the problem. Here we have an opportunity to look positively at how we can put in place systems that will produce better outcomes.

It is not possible at this stage to go into detail of how to make the legislative regime more cohesive and more coherent. I just wanted to alert the committee, as legislators, to this opportunity and I thank you for the chance to do so at this time. Thank you.

SUBMISSION NO. 31

**DEPARTMENT OF BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT**

Mr Mike Burgess  
*Chief Executive Officer*  
Received 10 June 2004

**Northern Territory Government**

Department of Business, Industry &amp; Resource Development

Chief Executive Officer  
2nd Floor Development House  
76 The Esplanade  
DARWIN NT 0800

AUSTRALIA

Ref:2004/0004

Ms Delia Lawrie  
Chairperson Sessional Committee on Environment and Sustainable Development  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801

Dear Ms Lawrie

I refer to your letter of 10 December 2003 to my predecessor, Mr Peter Blake, inviting this department to make a formal submission to your Committee's inquiry into the efficacy of the establishment of an Environmental Protection Agency in the Northern Territory.

The department has previously provided the Committee with a summary of the environmental protection and management functions and legislative matters that the agency administers. I now have pleasure in providing a further submission that addresses the terms of reference of the inquiry. For reference, a copy of the summary is appended to this submission.

Yours sincerely

MIKE BURGESS

February 2005

**DEPARTMENT OF BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT****Submission to the LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY, Sessional Committee on Environment and Sustainable Development Inquiry into the efficacy of the establishment of an Environmental Protection Agency.****INTRODUCTION**

In December 2003 the Sessional Committee on the Environment and Sustainable Development invited the Department of Business, Industry and Resource Development (DBIRD) to provide input into the Committee's inquiry into the efficacy of the establishment of an environmental protection agency (EPA) in the Northern Territory.

There is a community expectation that government will exercise an integrated consideration of scientific, technical, economic, ethical and social issues in balancing development and environmental management. It is inevitable that the ideal balance varies considerably between cultures, industry sectors, community groups and individuals.

Environmental protection is a high priority for all communities and responsible measures to ensure this occurs enjoys support by the public, industries and governments. Initially, environmental legislation adopted an approach of protection, conservation, prevention of destruction and prevention of pollution. Before long it was recognised that general protectionist policies were not always appropriate as, for society and the economy to continue to develop, the country needed to develop its natural and industrial resources. Environment protection rapidly evolved into a new professional discipline of environmental science. The underlying philosophy of environmental protection developed into environmental management, which is necessary to meet the expectations of the community and for the economy to progress.

Today the community expects industry, government and the community itself to manage their activities in such a way that potential negative impacts on safety, health and the environment (including physical, social and economic environment) are minimised and that the activities undertaken are sustainable over the long-term.

Some sectors of this department currently have statutory roles and responsibilities in this regard, administering items of legislation that contain specific environmental protection provisions. The groups involved and the respective legislative provisions are described in detail in an Appendix to this submission.

Western Australia (WA) has had an EPA since the mid 1980s. Although on different scales, both WA and the Territory have a reliance on resource-based economies, probably to a greater extent than any parallel with other jurisdictions. It is therefore useful to consider lessons learnt from the WA experience. In 2002 the WA Government commissioned an independent report entitled *Review of the Project Development Approvals System Final Report*. The report was prepared by an Independent Review Committee chaired by Dr Michael Keating AC. The report is germane to the issue under consideration and is referenced in this current submission. For convenience, the reference used is 'GWA 2002'.

**CONSIDERATIONS REGARDING THE POSSIBLE ESTABLISHMENT OF EPA****Community Expectations**

Streamlining of the development approval process needs to incorporate stakeholder expectations. Many stakeholders seek the involvement of an EPA in the approvals

process as a means to pursue an unbiased assessment of the relative merits of any proposal against its potential detriment.

These stakeholder expectations include transparency of process and sustainability. Transparency is achieved by involving and informing stakeholders of the decision making processes and sustainability is pursued by ensuring that resources and the environment are not unduly impacted for short-term gain, which in the longer term may become an impost on the community. Most supporters of the EPA concept recognise these attributes as being amongst key reasons for the establishment of such a body.

For a proponent, the management of the environmental assessment process is an introduction to the regulatory process in the NT. The operation of the environmental approvals system is important to gain the confidence of proponents that the Northern Territory Government is capable of handling project proposals in a responsible, efficient and timely manner. Co-ordination of the approvals process by a centralised government agency would assist in providing consistent advice on any issues related to the assessment process.

#### Strategic Environmental Assessment and Policy Development

With the exception of major development proposals that are determined to warrant assessment under the Northern Territory *Environmental Assessment Act* (EAA), most activities are currently assessed by agencies with jurisdiction for the activity.

Currently Northern Territory government agencies with statutory responsibility for environmental management potentially develop environmental management policy independent of each other. This may result in an inconsistent approach to environmental management across the jurisdiction. A centralised agency such as an EPA could develop and provide consistent policy direction for environmental protection objectives in the Northern Territory. The centralised agency responsible for environmental policy development could also be custodian of, and administer formalised environmental assessment of proposals, which trigger the EAA.

In relation to strategic resource planning the GWA 2002 report identified that regional resource management plans need to take a long-term view of what is appropriate and sustainable so that new proposals can be considered accordingly.

The above can be achieved through use of environmental protection objectives or goals developed by an EPA in consultation with other agencies.

Prior to commencing strategic environmental assessment, environmental protection objectives should be developed to provide the basis for a consistent policy in relation to development areas. A centralised agency would be better able to achieve this consistency.

In relation to resource development, for each major project there are a considerable number of smaller projects that do not trigger assessment under the EAA. In isolation, environmental impacts related to these activities may be of minor significance. When viewed as a group, the cumulative impacts may be significant and environmental risk increased. Whilst environmental management for these activities is the responsibility of the relevant agency, 'self assessment' and approval of activities may also be perceived as a potential problem from a stakeholder perspective. For example, one of the department's corporate objectives states: "We are committed to advancing and strengthening the Territory economy". It is possible to envisage a stakeholder

perception that promoting the benefits of economic development could take precedence over environment management considerations.

Some stakeholders have a negative view of environmental management in the mining and petroleum industries, largely as a result of legacy issues such as unrehabilitated abandoned mine sites. The establishment of an independent environmental overseer would provide more confidence for those who are so concerned.

It is possible that some businesses may prefer to deal with companies that have the capacity to operate in a more consistently regulated environment and the existence of an EPA may be a critical or threshold incentive to companies to do business with the Territory.

The Northern Territory covers a large area, has a small population base and has a small industry base with a focus on primary industry (pastoral and agricultural) and development of natural resources (fisheries, mining and petroleum).

The Territory currently has a legislative regime and government departmental structure to adequately ensure that any existing or proposed development activities are subject to appropriate levels of environmental assessment and environmental management, so as to prevent or minimise any potential impact on the environment.

While the concept of an EPA as an overseeing environmental watchdog has both general merit and general community support, experience in other states has identified a number of problem issues associated with the implementation of an EPA or similar type organisation. These issues include:

- addition of another level of bureaucracy to government processes
- cost of establishing a new government department
- cost of re-educating the public, government and industry
- confusion in industry and public about who does what
- duplication and overlap between government departments
- competition between departments and portfolios
- industry becoming responsible to a number of departments rather than a single action department
- additional processes and time delays to developments

One of the issues to be managed in having an EPA that has regulatory powers (irrespective of the structure of the EPA) is regulatory duplication. This can result in regulator competition or, in some situations, perception that the regulator may be attempting to avoid its responsibility.

Were industries to be universally subject to regulator competition it would be inevitable that any which were marginal economic performers may not be able to sustain the added impost of meeting more than necessarily stringent requirements, leading to otherwise unnecessary business failure. This is an outcome to be avoided for the Territory should an EPA with regulatory powers be established.

In some cases we already have multiple levels of environmental oversight. In the regulation of uranium mining in the Alligator Rivers Region, the high level of environmental sensitivity is addressed by ongoing Commonwealth involvement. Although DBIRD has day to day regulatory functions for uranium mining, the Commonwealth retains reserve powers. These are effectively exercised through a specifically-created 'watchdog' body, the Office of the Supervising Scientist (OSS). In

addition to some research activities, which are unique to the group, OSS duplicates review of all proposals and activities undertaken by DBIRD at uranium mining and exploration sites.

In the future the Commonwealth may extend its environmental role into the petroleum sector. The National Offshore Petroleum Safety Authority (NOPSA) is to commence operating on 1 January 2005. The Commonwealth Statutory Authority assumes the role of industry regulator for offshore petroleum safety Australia wide.

As part of the implementation, Australian jurisdictions agreed to review offshore petroleum environmental administration with a view to including environment regulation into NOPSA in the future.

## **CONSIDERATIONS IMPACTING ON OPTIONS FOR STRUCTURE OF AN EPA**

### **Current legislation**

This department believes that there are adequate provisions in existing legislation to cover all relevant aspects of environmental protection. This is described in detail in the Appendix. In addition to the legislation administered by the agency, the *Environmental Assessment Act* and its associated processes provides oversight of development proposals to ensure that an independent assessment occurs. In the case of DBIRD, this assessment is clearly at arms length, being undertaken by a completely separate government department.

There are four primary pieces of environmental legislation that cover environmental protection in the Northern Territory. These are the *Environmental Assessment Act*, the *Waste Management and Pollution Control Act*, the *Water Act* and the *Environmental Offences and Penalties Act*. Other legislation affecting mining and petroleum is also relevant and is considered further in this section.

#### *Environmental Offences and Penalties Act*

This Act establishes a set framework for a range of environmental offences (four levels) and sets a range of penalties that will relate to each of those levels of environmental offences. It was introduced so that all other pieces of environmental legislation in the Northern Territory could be linked to it so that there would be consistency across legislation in respect to the level of an environmental offence and level of penalty for that offence. Currently the following pieces of environmental legislation have been linked to the Act: the *Waste Management and Pollution Control Act*, the *Water Act*, the *Mining Management Act*, the *Petroleum Act*, the *Energy Pipelines Act* and the *Weeds Management Act*. Other pieces of legislation are in the process of being linked to the Act.

#### *Environmental Assessment Act*

This Act provides for the assessment of the environmental effects of development proposals in the Northern Territory and for the protection of the environment. For major projects, after a detailed public review and assessment of all aspects of a development proposal, the Minister for Environment makes a determination on whether a proposal can or cannot proceed on environmental grounds. If the proposal is found suitable to proceed, the Minister may make a number of recommendations in relation to environmental protection and management that are to be incorporated into any approvals process for the proposal to proceed.

### Waste Management and Pollution Control Act

This Act provides for the protection, and where practicable restoration, of the environment through preventing pollution, reducing the likelihood of pollution occurring, effectively responding to pollution, avoiding and reducing waste generation, increasing re-use and recycling and effectively managing waste disposal. The Act also encourages ecologically sustainable development and facilitates the implementation of national environment protection measures. The Act is linked to provisions of the *Environmental Offences and Penalties Act*.

### Water Act

This Act provides for the investigation, allocation, use, control, protection, management and administration of water resources in the Northern Territory. The Act is linked to provisions of the *Environmental Offences and Penalties Act*.

All of these four primary pieces of environmental legislation are administered by the Department of Infrastructure, Planning and Environment. The Office of Environment and Heritage administers the *Environmental Assessment Act* and the *Waste Management and Pollution Control Act* and reports to the Minister for Environment. The Controller of Water Resources (Conservation and Natural Resources Division) administers the *Water Act* and reports to the Minister for Lands and Planning. Provisions for licensing of water discharges have also been delegated to the Office of Environment and Heritage.

A number of the action or industry departments have their own legislation which relates specifically to the industry or industry activities that the department administers.

The minerals and petroleum resources of the Northern Territory are administered by the Minerals and Energy Group of DBIRD. The Mines and Petroleum Management Division administers legislation that specifically addresses the management of safety, health and environmental aspects of the development of mineral and petroleum resources. All mining and petroleum development activities are initially subject to assessment under the *Environmental Assessment Act*. Upon completion of the environmental assessment process, all environmental management of any mining or petroleum development, operation or closure activity is administered and controlled through the *Mining Management Act*, the *Petroleum Act*, the *Petroleum (Submerged Lands) Act* and the *Energy Pipelines Act*.

### Mining Management Act

This Act provides for the authorisation of mining activities, the management of mining sites and the protection of the safety and health of persons and of the environment on mining sites. This legislation addresses environmental protection and environmental management associated with mining project developments. Environmental management is integrated with all other aspects of the Mining Management Plan and management systems, including engineering, safety and health. The Act contains environmental offences and penalties linked directly to the *Environmental Offences and Penalties Act*.

### Petroleum Act

The Act regulates the exploration for, and the production of, petroleum onshore in the Northern Territory. It contains an entire division referring to environmental

management, with penalties for breaches linked to the *Environmental Penalties Act*. The Act also establishes environmental management of petroleum activities regarding rehabilitation, and permits the issuing of directions to operators.

#### *Northern Territory Petroleum (Submerged Lands) Act*

Provides for the exploration for, and the exploitation of, petroleum and certain other resources in territorial waters administered by the Northern Territory. It contains provision for the Minister to grant a licence subject to such conditions as he or she sees fit. Non compliance with any conditions can result in cancellation of the licence. The main provisions for environmental management are identified within the *Northern Territory Petroleum (Submerged Lands) Act Schedule*. This legislation essentially mirrors similar Commonwealth legislation.

#### *Energy Pipelines Act and Regulations*

Provides for construction, operation, maintenance and decommissioning of pipelines for the conveyance of hydrocarbons. The Act contains an entire Part referring to environmental management, with penalties for breaches linked to the *Environmental Penalties Act*. Under the *Energy Pipelines Regulations* environmental management strategies are directly incorporated into a pipeline management plan by agreement with the Minister.

Mining and petroleum activities (authorised under mining and petroleum legislation and contained within the mining and petroleum sites) are not subject to a number of provisions of the *Waste Management and Pollution Control Act* and the *Water Act*, as environmental protection and environmental management is adequately addressed by the mining and petroleum legislation.

Operating in this manner has several advantages to government and industry:

- prevents unnecessary duplication of regulatory functions
- reduces costs to government
- avoids regulator competition
- simplifies government processes
- provides a one-stop-shop for industry

#### **Business and Industry**

It is anticipated that industry sectors will generally be making their own submissions to the Committee in respect of the terms of reference of the inquiry. The views of industry are important in determining how any new regulatory regime would work.

Some members of both the mining and petroleum industries have expressed some reservations over the proposal to establish an EPA in the Northern Territory. These matters will likely be presented in some detail in various submissions by the industry, but are generally in accord with the reservations given in the preceding sections for applying establishment of an EPA.

Balancing this however, is the experience that many of the larger globally based resource companies have in dealing effectively with EPA's in developed countries.

The department has also received some comments from the Horticultural Association. The association has indicated that it may not make a submission in its own right. Its comments are included as an attachment to this submission.

The areas of the DBIRD regulatory role that would be subsumed by an EPA would be those regulating environmental management. To remove environmental functions from the legislation for regulation by another agency would present transitional difficulties from an operational and administrative perspective. Persons within those agencies undertaking such roles often have other duties and cannot be readily transferred to create an EPA without serious disruption to other regulatory functions. Alternatively, recruitment and ongoing employment of suitably qualified and experienced people to an EPA may be costly and uncertain.

This issue has been addressed in other jurisdictions through establishment of Memoranda of Understanding (MOU) between agencies. For example, the Western Australian EPA administers that *Environmental Protection Act* only, leaving other agencies to administer environmental management responsibilities through the MOU.

MOUs already exist between Northern Territory Government agencies. If an EPA is to be established in the NT, it is suggested that the existing MOUs between government agencies, which relate to environmental management responsibilities, be reviewed.

There is also the issue of adequately addressing public perception with the use of MOUs. A submission to the GWA 2002 review identified that the drafting of such arrangements is often not transparent and the resultant conditions not subject to public scrutiny. The review concluded that there was no need to prepare MOUs in a public manner, but the finished product should be available to the public.

#### **OPTIONS FOR INTRODUCTION OF ANY RECOMMENDED MODEL**

The Northern Territory Government currently has both the legislative regime and the regulatory capacity to adequately manage and protect the environment.

The Office of Environment and Heritage (OEH) is currently performing many of the functions of the EPA's, or equivalent, in the other states of Australia. It currently administers the *Environmental Offences and Penalties Act*, the *Environmental Assessment Act*, the *Waste Management and Pollution Control Act*, and has been delegated water discharge licensing functions under the *Water Act*.

Although OEH controls the environmental assessment process for mining and petroleum development proposals, after the assessment is complete it does not regulate operational environmental management in these areas.

DBIRD administers industry-specific legislation (refer to Appendix) for the regulation of environmental management, working cooperatively with OEH for the environmental assessment of major projects under a MOU.

This division of responsibilities has worked well to date and to move to another model will require a confident expectation that the costs of doing so will be realised in better environmental and economic outcomes for the Territory.

In addressing this issue of environmental protection and management of development in the Northern Territory, there are three main options:

Retain the current system but review processes and practices to determine if improvements can be achieved that benefit both environmental and economic outcomes.

Modify the current system so that OEH also takes on an overseeing “watchdog” role in environmental protection and management. Action departments that currently regulate environmental aspects of industry or development will continue to do so, but will be required to report back to OEH on the environmental compliance and performance of the industry.

Create a new organisation called an Environmental Protection Agency (or similar) with overall responsibility for protection of the environment and regulation of environmental management.

Option 1 would be the preferred option if there is acceptance that the current balance between resources applied to environmental regulatory compliance and environmental outcomes is effective. Current processes and practices can be reviewed to identify if improvements should be continually made in the interaction and communication between government departments, with minimum cost and disruption of government services.

Option 2 would go some way to addressing the ‘perception of independence’ issue as it would establish an EPA as an environmental watchdog. However, while not causing major disruption, duplication or additional costs to government, it will be important to have mechanisms to avoid potential regulator competition type issues generated by this approach. For example, if the watchdog has the power to direct another department to implement an action, for which the watchdog is not accountable and should the action department fail to act, fail to act in general accordance with the direction or fail to act fully in accordance with the direction, then there is potential dispute as to who is responsible. Similar risks will occur in enforcing directions to operators and compliance with legislation.

Option 3 involves the most significant change to current approaches and has the potential to significantly increase costs to government and industry. To be successful, the transitional arrangements and final implementation model would need to carefully address the following issues:

- Establishment and cost of a new government organisation
- Potential duplication in functions of existing departments
- Potential confusion for industry and public
- Changes to legislation
- Industry answering to two or more departments on related issues
- Potential conflicting requirements of departments
- Potential regulator competition
- Additional processes and potential time delays.

**ATTACHMENT**  
**Correspondence from the Horticultural Association**

*'The Northern Territory Horticultural Association is the peak representative body for horticulture industry groups in the Northern Territory. The NTHA council comprises two representatives from each horticulture commodity group.*

*On Monday the 8<sup>th</sup> of March 2004 the NTHA council unanimously agreed to oppose the establishment of an Environmental Protection Agency for the Northern Territory.*

*It is the general consensus amongst members that departments and /or agencies responsible for environmental protection and sustainable development already exist. As part of fresh food management, an increasing number of Northern Territory Growers currently undertake audited programs that mandate environmentally sustainable farming practices.*

*The NTHA submits that if the government perceives there is need for such an agency then the focus should be on improving, strengthening and empowering the existing departments currently responsible for environmental protection and ensuring these departments are adequately resourced to achieve the desired outcomes.*

*The NTHA believes that a partnership approach to addressing environmental issues and better communication between the various departments and stakeholders would be more beneficial than introducing another level of bureaucracy.'*

## APPENDIX

1. **Role of the Department of Business, Industry and Resource Development**
2. **Summary of legislation administered by the Department relevant to the environmental protection.**

### **SUMMARY OF ASPECTS OF ENVIRONMENTAL PROTECTION Department of Business, Industry and Resource Development**

#### **Introduction**

The Department of Business, Industry and Resource Development (DBIRD) manages programs for responsible development in the minerals, petroleum, pastoral, agriculture, horticulture, fishing, manufacturing and services sectors throughout the Northern Territory.

DBIRD, in partnership with business and industry, supports economic development in the Northern Territory and sustainable and responsible management of resources across the Territory's regions. The department is staffed by teams of skilled professionals and specialists with requisite knowledge and experience to ensure that, in consultation with other government agencies, development in the Northern Territory is achieved with due regard to protection of the environment and the principles of ecologically sustainable development.

Operational groups and their respective functions include:

<i>Business &amp; Trade Development Minerals &amp; Energy</i>	help business to grow and improve the Northern Territory's trade performance. administration and policy in relation to the mining and petroleum industries. To achieve this, it has separate organisational units which are responsible for mines and petroleum management (including environmental issues), geoscientific data, administration and grant of titles and the promotion and development of the Territory's resource base.
<i>Fisheries</i>	facilitate the development of an ecologically sustainable aquaculture industry and to manage the optimum sustainable utilisation of aquatic resources.
<i>Primary Industry</i>	develop and regulate primary industry, including the pastoral, agricultural and horticultural sectors.
<i>Policy Development &amp; Coordination</i>	research, develop and coordinate information and advice on policy issues strategic to industry and business development and to Asian and international relations.

#### **Legislation administered by the agency relevant to environmental protection**

##### ***Agricultural and Veterinary Chemicals (Northern Territory) Act***

This is an Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of the Northern Territory. Amongst other things the Act recognises that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society. It provides a system to regulate agricultural chemical products and veterinary chemical products and recognises that the principle of ecologically sustainable development requires a

regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations.

***Biological Control Act***

An Act which provides for biological control of any organisms that may be considered harmful to people or the environment of the Northern Territory.

***Energy Pipelines Act and Regulations***

Provides for construction, operation, maintenance and decommissioning of pipelines for the conveyance of hydrocarbons. The Act contains an entire Part referring to environmental management, with penalties for breaches linked to the *Environmental Offences and Penalties Act*.

Under the *Energy Pipelines Regulations* environmental management strategies may be directly incorporated into a pipeline management plan by agreement with the Minister. This strategy has been undertaken regarding license conditions.

***Fisheries Act and Regulations***

Amongst other things, the Act provides for the regulation, conservation and management of fisheries and fishery resources so as to maintain their sustainable utilisation.

***Mining Management Act***

Amongst other things, the Act provides for the authorisation of mining activities, the management of mining sites and the protection of the safety and health of persons and of the environment on mining sites. This legislation addresses environmental protection and environmental management associated with mining project developments. The Act contains an entire Part referring to environmental management, with penalties for breaches linked to the *Environmental Offences and Penalties Act*.

***Mining Act***

The *Mining Act* provides for grant of a variety of forms of mining title, subject to certain conditions. A standard condition is for compliance with the *Mining Management Act*. Non compliance with any conditions can result in cancellation of the mining title. *Mt Todd Agreement Ratification Act*

The Act contains the actual Deed as a schedule. This Deed contains a specific provision that the operator must comply with the environmental management provisions of the project's Environmental Impact Statement.

***Petroleum Act***

The Act regulates the exploration for, and the production of, petroleum onshore in the Northern Territory. It contains an entire division referring to environmental management, with penalties for breaches linked to the *Environmental Offences and Penalties Act*, complementing the *Waste Management and Pollution Control Act*, which excludes Petroleum sites. The Act also establishes environmental management of petroleum activities regarding rehabilitation, and permits the issuing of directions to operators.

***Petroleum (Prospecting and Mining) Act***

This Act was repealed in favour of the *Petroleum Act*. However, the Palm Valley and Mereenie Gas Fields still operate under this Act as their titles were originally issued and

have been recently renewed under the Act. The Act contains environmental management requirements still relevant to activities at the above facilities.

***Northern Territory Petroleum (Submerged Lands) Act***

Provides for the exploration for, and the exploitation of, petroleum and certain other resources in territorial waters administered by the Northern Territory. It contains provision for the Minister to grant a licence subject to such conditions as he or she sees fit. Non compliance with any conditions can result in cancellation of the licence. The main provisions for environmental management are identified within the *Northern Territory Petroleum (Submerged Lands) Act Schedule*. By agreement with the Commonwealth this Act is intended to mirror the *Commonwealth Petroleum (Submerged Lands) Act*, which is currently under review.

***Commonwealth Petroleum (Submerged Lands) Act and Regulations***

This is Commonwealth legislation administered by the Northern Territory on behalf of the Commonwealth. It also provides for the exploration for, and the exploitation of, petroleum and certain other resources in certain submerged lands, in this case seaward of Northern Territory territorial waters. It contains provision for the Minister to grant a licence subject to such conditions as he or she sees fit. Non compliance with any conditions can result in cancellation of the licence. Regulations require that an environment plan must be accepted by the (Northern Territory) Designated Authority prior to the commencement of a petroleum activity to ensure that activities are conducted in a way that is consistent with the principles of sustainable development.

Essentially DBIRD carries out similar functions relating to petroleum management in areas of Commonwealth jurisdiction (Ashmore Cartier adjacent waters and Northern Territory adjacent waters) to those in Territory waters under the Territory Petroleum and Petroleum (Submerged Lands) legislation.

***Plant Diseases Control Act***

Relates to the prevention and eradication of diseases in plants. Amongst other things it permits prohibition and destruction of plants, fruit, packaging or other materials that may host or transmit diseases or pests, thereby protecting the environment.

***Stock Diseases Act***

Provides for the control of diseases in stock. Amongst other things it allows for declaration of quarantine areas and or protected areas to prevent or exclude the spread of diseases, thereby protecting the environment.

***Stock Routes and Travelling Stock Act***

Allows for limitations to be placed on the use of stock reserves in order to preserve them, thereby providing opportunity for the specific exercise of environmental management and protection practices along defined stock routes.

**Legislation proposed that is intended to be administered by the agency in the future**

***Biological Resources Act***

Intended to control the issue of collection permits for biota to ensure the protection, conservation or management of native species or ecological communities.

***Plant Health Act***

New legislation to replace the current *Plant Diseases Control Act*.

***Veterinary Chemicals (Control of Use) Act***

Will regulate and control the use of Agricultural and Veterinary-use chemicals, fertilisers and stockfeed.

**Legislation administered by other agencies that may be related to DBIRD activities*****Poisons and Dangerous Drugs Act***

DHCS currently administers this. It currently provides some of the functions of the proposed *Veterinary Chemicals (Control of Use)* legislation.

***Environmental Assessment Act (NT)***

DIPE administers this, however mining and aquaculture projects receive preliminary assessment and referral from DBIRD where those projects meet agreed referral criteria. Where projects may meet the criteria for assessment that have been formally agreed between the departments a Project Assessment Committee comprising appropriate representatives of the departments recommends to the Minister the level of assessment that should be undertaken under the *Environmental Assessment Act*.

***Environment Protection and Biodiversity Conservation Act (Commonwealth)***

The Commonwealth Department of Environment and Heritage administers this, however mining and other development projects receive preliminary assessment from relevant groups within DBIRD. Where projects meet referral criteria the proponent must comply with the requirements of the legislation.

Under the EPBC Act, all NT export fisheries are independently audited by the Department of Environment and Heritage to ensure that the fishery is managed in an ecologically sustainable way. This involves the requirement to report on specific environmental assessment criteria and, upon assessment, fulfil agreed recommendations to receive export certification of fisheries products under the Act.

***Petroleum (Submerged Lands) Act (Commonwealth)***

Mines and Petroleum Management Division of DBIRD administers a number of area-specific pieces of legislation on behalf of the Commonwealth and this legislation is therefore described in more detail in a preceding section pertaining to legislation administered by DBIRD.

***Waste Management and Pollution Control Act***

DIPE administers this Act. The Act does not apply to a contaminant or waste associated with a mining or petroleum activity that is confined within the land on which the activity is authorised under relevant mining or petroleum legislation. In this case, environment protection and management of the contaminant or waste is managed under the relevant mining or petroleum legislation. Where a contaminant or waste is not confined to the mining or petroleum site, the Act does apply. The Act also applies to any substance that is prescribed to be an ozone depleting substance.

***Water Act***

DIPE administers this Act, however some sections of the Act do not apply to mining or petroleum activities. Where these exemptions apply environmental protection relevant to this Act is managed on mining sites under the relevant mining or petroleum

legislation. Discharges from a mining or petroleum site must comply with requirements of the Act.

**Statutory functions and powers relating to environmental protection**

An overview of the department's general statutory functions and powers is given under the individual headings of the relevant legislation in the preceding sections.

These functions and a range of procedural or administrative activities and policy initiatives relating to environmental protection are provided in more detail in an appended table.

Examples of procedural or administrative activities include the practice of undertaking audits and inspections of environmental performance where provision, but not the obligation, to do so exists in legislation, policy or codes of practice.

An example of relevant policy initiatives is to ensure that negotiated trade agreements do not include any constraints on the Northern Territory exercising reasonable environmental protection measures. This is typically an exempt item in trade agreements.

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management	All mining sites must have an Authorisation to carry out mining activities (including exploration or mining associated activities)	Mining Management Act (MMA) section 35	Statutory requirement under Part 4 of the MMA
Mines and Petroleum Management	Any application for an Authorisation must be accompanied by a mining management plan.	MMA section 35	Statutory requirement under Part 4 of the MMA.
Mines and Petroleum Management	Minister may stipulate conditions on Authorisations	MMA section 37	Section 37 of MMA specifically identifies conditions that may relate to protection of the environment and/or outcomes of any environmental assessment of mining activities undertaken under the <i>Environmental Assessment Act</i> . Such assessments include input from other NTG agencies.
Mines and Petroleum Management	A mining management plan is to include information and documents relevant to the proposed mining activities and specifically: an environmental management system a plan and costing of closure activities any other information required by Minister	MMA section 40	Statutory requirement under Part 4 of the MMA. DBIRD consults with other gov't agencies when assessing the mining management plans.

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management	Mining management plans are reviewed on an annual basis to ensure that proposed activities do not produce unacceptable levels of risk.	MMA section 41	Statutory requirement under Part 4 of the MMA
Mines and Petroleum Management	A security is required to cover rehabilitation of mining activities. The amount of security required is reviewed annually with the mining management plans.	MMA section 43	Statutory requirement under Part 4 of the MMA
Mines and Petroleum Management	Conduct audits and inspections of mining operations to confirm/ensure adherence to accepted mining management plans and environmental management systems.	MMA	These activities are defined functions of Mining Officers under the section 61 of the MMA. They are procedural requirements not statutory requirements.
Mines and Petroleum Management	Conduct environmental assessment of all mining development proposals to determine if they require referral to DIPE for consideration under the NT <i>Environmental Assessment Act</i> .	Administrative Agreement between DBIRD and DIPE.	For NTG efficiency purposes, DBIRD conducts a preliminary environmental assessment of all mining proposals. Proposals that exceed established guidelines are referred to DIPE for assessment under the <i>Environmental Assessment Act</i> through agreed processes
Mines and Petroleum Management	Issue of a certificate of closure, upon completion of rehabilitation of a mining site to agreed completion criteria.	MMA section 46	Statutory provision under MMA Part 4 . Issued by DBIRD after consultation with landholders and relevant NTG agencies.

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management	Upon grant or renewal of all forms of mining title, conditions can be attached to the title. A standard condition is for compliance with the requirements of the Mining Management Act.	Mining Act – various sections	Non-compliance with conditions can result in cancellation of title.
Mines and Petroleum Management	Those functions normally covered by the <i>Water Act</i> or the <i>Waste Management and Pollution Control Act</i> that are exempted on mining or petroleum sites.	MMA, Petroleum Act	The various Acts complement one another by having separate areas of jurisdiction.
Mines and Petroleum Management Commonwealth offshore area	Review environment plans for petroleum activities conducted within Commonwealth waters administered by the NT on behalf of the Commonwealth (including Ashmore and Cartier Islands Adjacent waters and NT Adjacent waters). Typical offshore petroleum activities assessed include: Exploration, development and appraisal drilling; Geophysical and Geotechnical Surveys; Production facilities; and Subsea pipeline installation and construction	Commonwealth Petroleum (Submerged Lands) Act 1967  Commonwealth Petroleum (Submerged Lands) (Management of Environment) Regulations 1999  Commonwealth Petroleum (Submerged Lands) (Pipeline) Regulations 2001	Statutory requirement under Regulation 6 of the <i>Petroleum (Submerged Lands) (Management of Environment) Regulations 1999</i>
Mines and Petroleum Management Commonwealth offshore area	Conduct environmental audits against the accepted Environmental Plans (and the legislative requirements) and investigate environmental incidents at petroleum activities in waters administered by the NT on behalf of the Commonwealth.	Commonwealth Petroleum (Submerged Lands) Act 1967 Commonwealth <i>Petroleum (Submerged Lands) (Management of Environment) Regulations 1999</i>	Assessment of level of compliance with accepted environmental plan under 'Powers of Inspectors' described in Section 126 of the <i>Petroleum (Submerged Lands) Act 1967</i>

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management Northern Territory Offshore Area	Review operator's environment requirements as outlined in the NT Petroleum (Submerged Lands) Act and its Schedule: "Specific Requirements as to Offshore Petroleum Exploration and Production 1995", for petroleum activities conducted within waters administered by the NT.	Northern Territory <i>Petroleum (Submerged Lands) Act</i>  NT Petroleum (Submerged Lands) Act Schedule: "Specific Requirements as to Offshore Petroleum Exploration and Production. 1995"	Assessment for compliance with environmental clauses identified in NT Petroleum (Submerged Lands) Act Schedule: "Specific Requirements as to Offshore Petroleum Exploration and Production. 1995"
Mines and Petroleum Management Northern Territory Offshore Area	Conduct environmental reviews and investigate environmental incidents at petroleum activities in NT Territorial waters.	Northern Territory <i>Petroleum (Submerged Lands) Act</i>  NT Petroleum (Submerged Lands) Act Schedule: "Specific Requirements as to Offshore Petroleum Exploration and Production. 1995"	Assessment of level of environmental compliance under 'Powers of Inspectors' described in Section 126 of the NT Petroleum (Submerged Lands) Act
Mines and Petroleum Management Onshore Area	Review onshore environmental requirements as outlined in the "Schedule of Onshore Petroleum Exploration and Production Requirements 1993" and Northern Territory <i>Petroleum Act</i> for petroleum activities.	<i>Petroleum Act</i> <i>Petroleum Act</i> "Schedule of Onshore Petroleum Exploration and Production Requirements 1993"	Environmental requirements in the Petroleum Act pursuant to Clause 58(f) and Clause 71 and its "Schedule of Onshore Petroleum Exploration and Production Requirements 1993",

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management Onshore Area	Conduct environmental inspection and investigate environmental incidents at onshore petroleum production facilities.	Petroleum (Prospecting and Mining) Act	<i>Sections of the Petroleum (Prospecting and Mining) Act have environmental requirements for the Palm Valley and Mereenie Gas Fields in addition, to those of the "Schedule of Onshore Petroleum Exploration and Production Requirements 1993"</i>
Mines and Petroleum Management Onshore Area	Rehabilitation of petroleum exploration sites in which the operator has defaulted on rehabilitation commitments	<i>Petroleum Act Section 58 (c) Petroleum Act: "Schedule of Onshore Petroleum Exploration and Production Requirements 1993" pursuant of Section 71 of the Petroleum Act</i>	Facilitate rehabilitation of former petroleum sites to agreed standards to assist with hand over of land management responsibilities to future land manager.
Mines and Petroleum Management Onshore Area	Conduct environmental inspections and investigate environmental incidents at onshore petroleum production facilities.	<i>Petroleum Act and "Schedule of Onshore Petroleum Exploration and production Requirements 1993" pursuant of Section 71 of the Petroleum Act</i>	Assessment of level of compliance with environmental requirements pursuant to the 'Powers of Inspectors' described in Section 88 of the <i>Petroleum Act</i>
Mines and Petroleum Management Onshore Area	Review and potential audits on matters agreed with the Minister to be incorporated into a pipeline Management Plan.	Energy Pipelines Act and its associated Regulations	Matters are agreed with the Minister and incorporated into a pipeline Management Plan.
Mines and Petroleum Management Onshore Area	Provision of comments to Office of Environment and Heritage on petroleum proposals on an as needed basis.  Provision of comment to the Commonwealth on	Environmental Assessment Act  Environmental Biodiversity and Conservation Act 1999	Review of Notices of Intent, Guidelines, Environmental Impact Statements and Public Environmental Reports.

	petroleum activities on petroleum proposals on an as needed basis.		
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Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Mines and Petroleum Management Offshore and Onshore Area	<p>Review and comment on proposals and policies by Northern Territory and Commonwealth agencies related to environmental aspects of resource management.</p> <p>Provision of advice to the Commonwealth/Northern Territory on administrative processes and regulatory reviews, including transition from prescriptive to objective based regulation.</p>	<p>Provisions for consultation between relevant government agencies with jurisdiction in the area.</p> <p>Various legislation relating to petroleum exploration and development</p>	<p>Provision of technical advice to the Commonwealth and Northern Territory on environmental impacts related to petroleum activities. For example, DBIRD has representatives on the following groups:</p> <ul style="list-style-type: none"> <li>National Oceans Policy (Northern Region Marine Plan)</li> <li>Darwin Harbour Advisory Committee.</li> <li>Technical advisory committee on disposal of dredge spoil.</li> <li>Safety and Environment Administrators forum for offshore petroleum</li> <li>Regulatory and administrative review of <i>Petroleum (Submerged Lands) (Management of Environment) Regulations 1999</i>.</li> </ul>

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Industry Development	Upon receiving an application for a Collection Permit to Access and Use NT Biological Resources, the CEO may refuse to grant a Collection Permit if an initial assessment finds the likely effect (and in particular any detrimental impact) from issuing a Collection Permit would threaten the survival of wildlife, habitats, vegetation and ecosystems, or threaten the landscape or environment in general.	Biological Resources Act (proposed)	
Industry Development	The NT Government will not grant a Collection Permit to Access and Use NT Biological Resources to someone found guilty of an offence that relates specifically to the protection, conservation or management of native species or ecological communities.	<i>Biological Resources Act (proposed)</i>	
Industry Development	Upon NT land being declared a national park or marine park, granting a Collection Permit to Access and Use NT Biological Resources may be inconsistent with the management principles established for that park.	<i>Biological Resources Act (proposed)</i>	

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Industry Development	The NT Government will have the powers to monitor and enforce collection activities of those holding a Collection Permit by way of appointing inspectors. This is to identify processes and activities that have, or likely to have significant adverse impacts on biodiversity. The identified threat can then be regulated or managed accordingly.	<i>Biological Resources Act (proposed)</i>	
Industry Development	Penalties and sanctions will apply to those who enter land and disturb the environment without the required Collection Permit.	<i>Biological Resources Act (proposed)</i>	
Industry Development	Guiding Principle No. 7 – Access to and use of biological resources will be undertaken without significant damage to the habitats that support these biological resources and in a manner that minimises the impact on, or damage to, the collected and non-target organisms.	(draft) NT <i>Policy for Access to Biological Resources for Bioprospecting in the Northern Territory</i>	
Industry Development	Guiding Principle No.8 – Where there are potential environmental impacts from access activities, and the Minister for Environment and Heritage deems it necessary pursuant to relevant legislation, an environmental assessment may be required.	(draft) NT <i>Policy for Access to Biological Resources for Bioprospecting in the Northern Territory</i>	

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Primary Industry Group	<p>The PI Group works with industry to develop, adopt and adapt practices and systems that maintain or enhance the resource base.</p> <p>Implementation of such practices eliminates or minimises detrimental environmental effects.</p>	<p>The Primary Industry Group adheres to the 1991 definition and principles of Sustainable Agriculture: Sustainable Agriculture is the use of practices and systems which maintain or enhance the economic viability of agricultural production; the natural resource base; and other ecosystems which are influenced by agricultural activities.</p>	<p>Involves consultative, advisory and extension services</p>

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Resource Protection Division	<p>The Resource Protection Division provides industry-focussed programs that have been highlighted through industry and departmental consultation.</p> <p>The use of chemicals in these industries has potential for detrimental effects on the environment. Regulation of their usage provides environmental protection.</p>	<p>The Commonwealth legislation is administered by the Australian Pesticide and Veterinary Medicines Authority to assess and register agricultural and veterinary chemicals for sale in Australia.</p> <p>The Agricultural and Veterinary Chemicals (Northern Territory) Act implements the requirements relating to the sale of Agvet chemicals in the NT. The Agricultural and Veterinary Chemicals (Control of use) Bill will, when passed, regulate and control the use of Agvet chemicals, fertilisers and stockfeed in the NT.</p>	<p>The Australian Pesticide and Veterinary Medicines Authority (APVMA) administers the Agvet code. The Agvet Code and legislation requires the APVMA to be certain that the product can be used without unacceptable risk to the environment. While the scheme is whole of Government, Resource Protection Division within DBIRD represent the NTG, and is the signatory to the National Registration Scheme and participates in relevant committees: These include the Registration Liaison Committee which deals with registration and use issues that include environmental considerations. Members are state Dept Agriculture, APVMA and Commonwealth Depts including Dept of Environment and Heritage.</p> <p>The Product Security and Integrity Committee deals with policy related to agvet chemicals, fertilisers, traceability etc.</p> <p>As well, Resource Protection is a corresponding member of the Fertiliser working group, a national group that includes the States,</p>

			<p>Commonwealth and Fertiliser Industry Federation of Australia that is set up to establish national standards for fertilisers for the protection of the environment and health</p> <p>Where issues cross agency responsibilities, Resource Protection consults with agencies concerned.</p>
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Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Resource Protection Division	<p>The use of chemicals in the agriculture, horticulture and pastoral industries has potential for detrimental effects on the environment.</p> <p>Regulation of their usage provides environmental protection.</p>	<i>Poisons and Dangerous Drugs Act</i>	<p>The Department of Health and Community Services currently administer the Act.</p> <p>The Registrar of Pesticides is a statutory position in DBIRD.</p> <p>Parts of the current Act relating to agvet chemicals will soon be replaced by a new act "<i>Agricultural and Veterinary Chemicals (Control of use) Act</i>". Currently being written by DBIRD and to be administered by Resource Protection Division, DBIRD.</p> <p>Under the new act the Registrar of Pesticides position will be replaced by a Chemicals Coordinator position within Resource Protection Division.</p>
Resource Protection Division	The objective of plant health legislation is to prevent, eradicate or manage plant pests and diseases, and to facilitate trading in plants and products.	<i>Plant Disease Control Act (1979)</i>	Administered by Resource Protection Division, DBIRD.

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Resource Protection Division	<p>Prevention of the introduction and spread of plant pests and diseases in the Northern Territory by specifying management requirements, and by accreditation of businesses to issue certificates for export of plants and plant products.</p> <p>DBIRD to provide diagnostic and assessment services, monitoring of various crops and pests, advisory services and, together with industry, develops management systems.</p> <p>The effectiveness of the legislation will depend on cooperation between government and industry in the sharing of this technical expertise. Links with client groups through industry bodies will increase the value of the legislation, in preventing and responding to pest and disease outbreaks and exotic incursions.</p>	<p>Plant Health Bill</p> <p>The new legislation will be consistent with the vision of the Primary Industry Group with DBIRD. This advocates ‘food and fibre products of the highest quality delivered through efficient supply chains to domestic and international markets’</p> <p>The legislation will have links to the goal of the resource Protection Division by being part of the mechanism to ensure that plant production and market access are not restricted by pests and diseases.</p>	<p>New legislation to replace the <i>Plant Disease Control Act (1979)</i></p> <p>The objectives of industry associations will be considered. The legislation will take into account the current climate in relation to plant protection in the NT, including:</p> <ul style="list-style-type: none"> <li>-continued expansion of horticulture and Agriculture industries.</li> <li>-the movement of people and cargo</li> <li>-interstate and international markets for plants and plant products continually being developed.</li> </ul> <p>the horticulture industry is ideally placed to internally drive training in interstate certification assurance and safe food programs.</p> <p>Community responsibility in pests and disease management will be reflected in the legislation.</p>
Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism

Fisheries	<p>Completion of an environmental assessment /audit on all NT export fisheries to determine the extent to which management arrangements will ensure these fisheries are managed in an ecologically sustainable way.</p> <p>Recommendations from completion of the reports address areas of each fishery requiring greater environment protection (eg new bycatch restrictions etc)</p>	The <i>Environment Protection and Biodiversity Conservation Act</i> (EPBC Act) administered by the Commonwealth Department of Environment and Heritage (DEH) for the Australian Government. .	Through completion of the assessment process the NT Fisheries Group is required to report against the Australian Government Guidelines for the Ecologically Sustainable Management of Fisheries.
Fisheries	<p>Protection of endangered, threatened or protected species.</p> <p>Any interaction with endangered, threatened or protected species by commercial fishers must be reported under the EPBC Act.</p>	As above and under the Northern Territory <i>Fisheries Act</i> .	The NT Fisheries Group supports this legislation and encourages fishers to report any interaction with these species.
Fisheries	The Action of releasing fish or polluting waters without a permit.	<i>Fisheries Act</i>	Division 3 – Permits 15 This section addresses the prevention or release of any live aquatic life, possession or sale of noxious fish or release of pollution that is detrimental to aquatic life.
Fisheries	Under associated Fisheries Management Plans ensure the habitats of fish or aquatic life and the general environment is not detrimentally affected.	Fisheries Management Plans established under Part 3 – Section 21 of the <i>Fisheries Act</i>	

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	Aquatic pest introduction minimisation policy public education inspection of high-risk small international vessels inspection of high-risk apprehended vessels Monitoring of environment for introduction of exotic marine species in areas exposed to vessel traffic Emergency response preparedness Participation in national forum addressing aquatic pest threats represented by vessels (commercial, non-trading and recreational), aquaculture, aquarium trade, aquatic recreational pursuits	<i>Fisheries Act:</i> An Act to provide for the regulation, conservation and management of fishery resources so as to maintain their sustainable utilisation, to regulate the sale and processing of fish and aquatic life, and for related purposes.	
Fisheries	Pubic education regarding legalities associated with possession of noxious species and the underlying reason for their status being the protection of the environment and the way of life the undisturbed environment supports.	<i>Fisheries Act:</i> .	Section 15 part 1b – possession, sale and movement of noxious fish or aquatic life

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	Inspection of high-risk small international vessels The slow meandering journeys, variable level of maintenance, high visitation of impacted environments (favouring the presence of marine pest species) and high-risk local destinations (eg marinas) of these vessels resulted in the development of risk mitigating protocols at the behest of marina owner operators and local marine based industry members.	<i>Fisheries Act.</i>	Reg 17 – prohibits movement and sale of diseased aquatic life (including aquatic pests) Reg 18 – Director has discretion to order destruction of diseased or contaminated fish and aquatic life
Fisheries	Inspection of high-risk apprehended vessels The slow journey of these vessels and demonstrated ability for vessels from an area in South East Asia to effectively transport known marine pests into Territory waters resulted in the implementation of inspection protocols reliant on inter-agency liaison and cooperation.	<i>Fisheries Act:</i> NT Quarantine Act of value in facilitating the destruction of vessels infested with marine pests	Fisheries Act Regs 17 and 18 Quarantine Act – order for destruction issued on suspicion of pest presence Agency cooperation between AFMA, ACS, Navy, DIMIA, Fisheries Group

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	<p>Pubic education regarding legalities associated with possession of noxious species and the underlying reason for their status being the protection of the environment and the way of life the undisturbed environment supports.</p> <p>Knowledgable public extends surveilliance capabilities vigilant for exotic species.</p> <p>Knowledgeable public reduces the likelihood of exotic species being introduced intentionally</p>	<p><i>Fisheries Act:</i></p>	<p>Section 15 part 1b – possession, sale and movement of noxious fish or aquatic life</p> <p>Section 26 - emergency response actions</p> <p>Reg 13 – regulation of movement of fish and aquatic life</p> <p>Reg 17 – prohibits movement and sale of diseased aquatic life (including aquatic pests)</p> <p>Reg 18 – Director has discretion to order destruction of diseased or contaminated fish and aquatic life</p> <p>Reg 19 – establishment of pest control committee</p> <p>Reg 21 – declaration of control areas</p> <p>Reg 22 regulation of control areas</p>

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	Emergency response preparedness lead agency in response to marine pest outbreak lead agency response with respect to management of noxious fish and aquatic life	<i>Fisheries Act:</i> NT Emergency Services - Special counter disaster plan emergency animal, fish or plant diseases or pests National Emergency Marine Pest Plan	Act Section 15 part 1b – possession, sale and movement of noxious fish or aquatic life Act Section 26 - emergency response actions Reg 17 – prohibits movement and sale of diseased aquatic life (including aquatic pests) Reg 18 – Director has discretion to order destruction of diseased or contaminated fish and aquatic life Reg 19 – establishment of pest control committee Reg 21 – declaration of control areas Reg 22 regulation of control areas
Fisheries	Monitoring of environment for introduction of exotic marine species in areas exposed to vessel traffic Important preparedness and surveillance to underpin effective emergency response, or management and control activities.	<i>Fisheries Act:</i> EPBC Act	The Consultative Committee on Introduced Marine Pest Emergencies is a national group representing a central point of contact for information gathering and dissemination, also a source of expertise in marine pest responses and available technologies

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	Participation in national fora addressing aquatic pest threats represented by vessels (commercial, non-trading and recreational), aquaculture, aquarium trade, aquatic recreational pursuits		National Introduced Marine Pest Coordination Group National Ornamental Fish Trade Policy Working Group
Fisheries	Aquaculture Water uptake / discharge licence	<i>Water Act</i> , particularly Sections 45 and 74 and Regulations, part 3 (9&9A)	Part of requirement for the issuance of an aquaculture licence.
Fisheries	Aquaculture Submission of an Environmental Management Plan	Environmental Assessment Act	Must be submitted and approved by DEH before an aquaculture licence can be issued.
Fisheries	Aquaculture Development approvals for construction of aquaculture farms	Planning Act	Required prior to the issuance of an aquaculture licence.
Fisheries	Aquaculture Preliminary Environmental report or Environment Impact statement	Environmental Assessment Act	Required prior to the development of aquaculture sites and before an aquaculture licence can be issued.

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
Fisheries	<p>Aquaculture licence</p> <p>The Fisheries Regulations allow for the imposition of conditions on the aquaculture licence to ensure environmental protection.</p>	<p><i>Fisheries Act</i> and Regulations</p> <p>All other Acts and regulations must be satisfied before an Aquaculture licence can be issued under the <i>Fisheries Act</i>.</p>	<p>The Fisheries Regulations allow for the imposition of conditions on the aquaculture licence that may control Development Bonds (money to be held in trust in case of environmental damage),, water discharge conditions, approval from the Director before changing farm layout or operational procedures, translocation and protocols to be followed in the event of disease outbreak etc.</p>
Policy Development, Policy Development and Coordination Group	<p>The Manufacturing Industry Strategy 2004-2009 (to be launched on 11 Feb 2004) incorporates a strategic commitment to encourage manufacturing best practice environmental sustainability and cleaner production awareness and support</p>	<p><i>The Manufacturing Industry Strategy approved in December 2003 and is to be launched on 11/2/2004.</i></p>	<p>Budget allocation is being sought in DBIRD's 04-05 Budget bid.</p>

Division	Actions relating to environmental protection	Operative legislation or other administrative provision	Comments Eg responsibility or task shared with another agency under legislation/agreement etc and identify mechanism
<p>Policy Development, Policy Development and Coordination Group</p>	<p>Australia’s multilateral and trade policy obligations and treaties impact on S and T legislation and actions. Review of NT obligations reveals no specific constraints or requirements in WTO, SAFTA and proposed AUSFTA provisions. Note however that FTA’s include general exceptions for action to “protect environment”.</p>	<p>Relevant FTA obligations include:                      “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:                      (b) necessary to protect human, animal or plant life or health;                      (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;</p>	<p>Continued exclusion of environment protection action in AUSFTA is expected. WTO and FTA situation will continue to be monitored to ensure any new constraints and obligations are tracked and reported accordingly.</p>

## SUBMISSION NO. 32

**NORTHERN TERRITORY GREENS**  
Mr Justin Tutty and Mr Matthew O'Reilly  
*Secretary*  
Received 11 June 2004



PO Box 331  
NIGHTCLIFF NT 0814  
secretary@nt.greens.org.au  
Tel: (08) 8985 6237

**Submission to the inquiry into the establishment of an EPA for the NT**

NT Greens welcome the opportunity to comment on the proposal for the establishment of an EPA for the NT. In addressing the terms of reference, we are focussed on the implications for Environmental Impact Assessment, but recognise other significant roles for an EPA.

**Arguments for the establishment of an EPA**

The long-standing call for the establishment of an environmental regulator for the Northern Territory are well founded.

- Growing need for environmental protection

The NT is home to significant environmental assets, in varying states of neglect and degradation. Threats posed by the ubiquitous triumvirate of fire, ferals and weeds have wrought an insidious degradation of the landscape, with alarming impacts of habitat loss and species extinction.

In addition, pressure for an unprecedented level of industrial development, encompassing intensive agriculture, fossil fuel based industry and more aggressive mineral exploitation, are placing corresponding unprecedented demands for environmental assessment, monitoring and regulation.

Further, the particular nature of the major volume of industrial development proposals bear significant threats to the whole NT landscape, through the broad impacts of accelerated climate change from greenhouse gas pollution.

The current regime of environmental protection in the NT is vastly inadequate in the face of the complexity of existing impacts and the scale of growing threats to our shared natural environment.

- The Office of Environment and Heritage (OE&H)

In the case of the OE&H, this inadequacy is not only in terms of resourcing - by measures of budget, expertise, and regulatory power - but also in terms of structural integrity: constitution, independence, accountability, transparency.

The OE&H has an insufficient budget, which allows only a relatively small staff to manage a workload which will only grow in volume, complexity and significance to both government and the community. While individual staff members are undoubtedly valuable assets, their small collective number limits the breadth of experience and variety of specialisations encompassed by the Office, in the many varied areas of expertise required for effective environmental regulation.

When conducting Environmental Impact Assessment, the OE&H does not have sufficient resources to carry out its own investigations of the potential impact of the proposal where the proponent's own documents are deficient. The Office is largely dependent upon documents commissioned by the proponent, and so does not necessarily have sufficient information to prepare recommendations which adequately respond to potential environmental impacts of the proposal.

A tight budget also constrains the capacities of the OE&H, such that important programs and functions are simply not fulfilled - most notably, monitoring and enforcement. The Office is forced to choose which issues and projects to focus on.

A far greater impediment to public confidence is in the structural composition of the OE&H. Totally lacking in statutory basis, the Office has no legally proscribed objectives, let alone any mechanism for accountability to such goals. The Office produces no annual report, and is not independently accountable to Parliament.

But it is the Office's status as a division of DIPE which most jeopardises public confidence. In cases where the Department is directing development projects, there is a perceived conflict of interest between the Department's role as proponent and the OE&H, as a division of DIPE, both in their role as environmental policy maker and their responsibility for assessment.

The recently proposed infrastructure development at Glyde Point is a significant case in point. Consisting of five stages, to roll out over 30 years and encompassing an area over 4000 hectares, the industrial estate would require over 1,500 hectares of mangrove clearing and ocean reclamation. This area is quite obviously environmentally sensitive and valuable, encompassing diverse mangroves, vine rainforests, coral reefs and dugong feeding grounds. This is a massive proposal, with serious implications for biodiversity.

It is significant to note that, while the public documents make vague reference to gas-related industry, there has been no commitment from any industry partners. The companies who plan to mine the fuel seem more interested in processing it on a floating platform, for transportation to more lucrative markets in the northern hemisphere. DIPE is making the indefensible proposal that we sacrifice our natural wealth in speculation that such a gesture will bring the big industry players on shore.

In this tenuous policy environment, a number of community groups and representative organisations have explicitly expressed a lack of confidence in the environmental assessment process. These stakeholders have particularly identified the perceived conflict of interest inherent in a situation where the assessment is to be performed by the OE&H, a division of the proponent, DIPE. Clearly, an independent, statutory environmental regulator would be free of such perception.

- The Minister for the Environment

The current role played by the Minister for the Environment in regards to Environmental Impact Assessment would be more suited to an independent environmental regulator.

Currently, the Minister has the powers to decide what level of assessment applies to which projects. Unlike an independently constituted environmental regulator, the minister is a political agent, whose decision making is subject to political influences and objectives well beyond the scope of those statutory objectives which may define an EPA for the NT.

As requirements for assessments increase, with growing pressure for development and more active land management, this reliance upon the Minister for such a significant administrative function will undoubtedly stretch capacity to respond to the growing workload. The Minister cannot be expected to embody the same level of expertise in environmental science, or the relevant technical expertise of the project being assessed, as could be found in an appropriately resourced EPA.

- Other Government Agencies and Departments

In the current legislative environment, government agencies with responsibility for developments or land management have the responsibility to refer proposals to the Minister for Environment when they believe there is a significant environmental issue.

Those agencies cannot be expected to encompass the same level of relevant environmental knowledge as could be found in an appropriately resourced EPA. As a result, proposals may not always be referred as appropriate.

This risk is just as significant for the consideration of proposals which do not require formal Environmental Impact Assessment but still have some environmental impact, and so demand some consideration regarding controls and conditions for environmental protection. Once again, the responsible minister or agency may not have sufficient expertise to adequately consider these issues.

Even if we assume a level of expertise, assessment of cumulative impacts in relation to other developments and plans in the area is unlikely to fall within the Minister or agency's field of vision.

When an agency has referred a proposal, the Minister sends any assessment report to the referring party, who decides whether or not to adopt the report. In this way, any such assessment may be ignored in the absence of any public accountability, and the proposal may well go ahead without any conditions that protect the environment.

Under existing legislation, institutional arrangements mean that the responsibility to determine whether to pursue enforcement options often doesn't rest with an appropriate, independent decision maker. Those agencies with the responsibility to prosecute breaches of environmental controls have often been involved in issuing the approval which has been breached.

For example, the recent Federal Senate inquiry into the monitoring and reporting of Australia's uranium mines identified in great detail a perceived conflict of interest between the dual roles of the Department of Business, Industry and Resource Development as both a promoter and regulator of uranium mining. The Department is the primary regulator of the Ranger Uranium Mine, which in its lifetime has suffered well over a hundred environmental incidents, with no prosecution. It is only with the recent

scrutiny brought by a series of gross environmental management failures that the miner seems set to face their first prosecution for a breach of regulations. The Senate Committee report noted that:

*'2.15 The DBIRD is responsible for the supervision of mining in the Territory as well as the regulation of mining's environmental impacts. Other States devolve environmental regulatory functions to a body, such as an Environmental Protection Agency, which lessens the possibility of perceived and actual conflicts of interest'*

## **Options for the Structure of an EPA**

Much has been written, over many years, analysing and evaluating the various instances of environmental protection agencies in various jurisdictions around the world. While no one implementation of the concept of an EPA stands as a model to all others, a best-practice model for the NT can be composed based upon the following features and functions :

- Environmental Impact Assessment

A major focus of a best-practice EPA should be the functions of environmental assessment. These extend beyond administering Environmental Impact Assessment, to related roles in consultation, monitoring and enforcement. Those powers now vested in the Minister for the Environment must be transferred to the new Authority.

The Environmental Assessment Act and Administrative Procedures should be amended to give administrative authority to an independent EPA. The legislation should include criteria to guide the determination of the appropriate level of assessment for various potential development proposals. Such a statutory list of activities which require referral to the EPA, and a guide to the corresponding appropriate level of consultation and assessment, should provide a good basis for assessment of environmentally sensitive plans and proposals. It should be an offence to carry out a listed activity without reference to the Authority.

To safeguard against the risk of relevant actions and proposals failing to be identified for referral, any person should be able to refer an action or proposal to the EPA, which must also be empowered to 'call in' proposals.

Where the proponent's own data are deficient, the EPA must be empowered by legislation and appropriate resourcing to call for further information, and conduct its own investigations of the potential impact of the proposal.

The EPA must have a legal obligation to give due consideration to the cumulative impacts of all planned and existing actions, projects and programs in a region under assessment. Experience with ongoing weaknesses in the Assessment process suggests that the legislation itself should require greater emphasis on the scoping process. More time must be devoted to community participation in this fundamental stage of environmental assessment, and more energy needs to be invested in engagement of stakeholders at this initial stage. Similarly, routine shortcomings in the consideration of project alternatives suggest that the Act should demand greater attention to this analysis tool.

- Other Environmental Assessment

The EPA's responsibilities for environmental assessment should be more extensive than those proposals which trigger format Impact Assessment. The EPA should be referred any relevant approvals which are granted by other bodies under other legislation, for example water allocation licensing under the Water Act, and land-clearing applications under the Planning Act.

Once the EPA is fully established, other government bodies will maintain some responsibility for implementing environmental regulations and plans. The EPA should still play a role in such cases. Firstly, the EPA should **advise and coordinate** such efforts by other departments and agencies. The EPA should also **audit other government bodies** for performance against generic environmental objectives.

Further, the EPA should be equipped to investigate potential environmental impacts even where a proposal has not been referred by another agency or department.

An EPA should be empowered to make recommendations on any environmental controls or conditions which should be placed upon any such proposal. Where necessary, the relevant agency or department must have a legal obligation to address the EPA's recommendations. If the responsible body decides not to conform to these recommendations, the relevant legislation must require a public written response stating the reasons for diverting from the EPA's recommendations. The EPA should be empowered to facilitate appeals to such a decision.

- Facilitating Community Consultation

A central environmental regulator such as described in this submission is clearly the most suitable agent for facilitating public participation in environmental assessment processes. Environmental Assessment legislation should specify base levels of community consultation which can be expected for corresponding forms of assessment. But facilitation of community participation goes beyond ensuring that the opportunity for public involvement is there : the EPA should recognise a responsibility to seek out, nurture and support ongoing community involvement in environmental assessment processes.

- Accountability Mechanisms: Appeals

To ensure an appropriate level of accountability, these decision makers (be it the EPA, or any other decision making agency) must be legally obliged to submit decisions to third party appeals before an independent body. All participants, and third party appellants, must have rights to appeal not only approvals, conditions and recommendations, but also decisions on whether to assess a proposal, and decisions about the level of assessment granted.

The EPA must be legally required to produce written, publicly available reasons for all decisions. All recommendations stemming from any level of environmental impact assessment must be published in this way. Other relevant laws should be amended to provide that any decision-making agency or Minister must implement the EPA's recommendations unless it publishes written reasons for not doing so. Such reporting provides the fundamental basis for participants or a third party to consider their right to appeal.

- Monitoring

If an EPA is to act as a regulator, rather than just an advisory body, it is essential to recognise a strong monitoring role within the Authority. Monitoring is essential not only to ensure that conditions placed upon approvals are adhered to, but also to verify that the true environmental impacts of an approved action do not exceed those anticipated during the assessment process.

The recent reclamation of mangroves at Wickham Point for the construction of the Philips LNG Plant is a case in point. In the absence of a statutory regulatory authority to perform the role, it was left to community activists to recognise that not only were areas cleared beyond those approved for the development, but also that down-site impacts on surrounding mangrove stands were clearly evident in the early stages of the project, despite the failure of the minimal environmental assessment to predict such impacts. Clearly, the public are poorly resourced to perform such a monitoring role : indeed, the usual management of a project site such as this legally prohibits it. The EPA must be legally required to undertake monitoring, with a view to reconsidering the capacity of approval conditions in the face of the environmental impacts encountered, and penalising any non-compliance with these requirements.

- Enforcement

There is a fundamental role for the EPA, as an independent environmental regulator, to investigate breaches of environmental laws and, where appropriate, to be seen to enforce penalties. There should be a well-defined protocol for pursuing an escalating scale of enforcement options, which may begin as written warnings, but should extend to the extreme of giving the Authority the power to suspend approvals and pursue criminal prosecution. Such well defined, well resourced and politically independent enforcement powers are essential for the establishment of a deterrent threat against breach of environmental laws and approval conditions.

These powers need to extend beyond the core business of approvals granted exclusively by the EPA, to allow the Authority to prosecute breaches of any relevant law (such as the Planning Act) which results in environmental harm. As a truly independent authority, the EPA should be best placed to consider the decision to prosecute. As well as the option to prosecute, the EPA will require appropriate powers to conduct monitoring, perform inspections and demand information.

- Other functions of an EPA

This submission has focussed on the important functions of environmental assessment (and the directly related roles of consultation, monitoring and enforcement). However it should be recognised that an independent EPA, which is appropriately resourced to perform these roles, will also be well placed to take responsibility for a number of 'big picture' environmental management responsibilities. Some obvious examples would include policy, planning and reporting.

While **policy** is developed across government, an EPA would be a good agency to coordinate, monitor, audit and review all policy that relates to environment, across all government departments. Where appropriate, the EPA would also be best placed to implement environment policies.

Although some government departments already perform some level of environmental **planning** (DIPE defines Land Use Objectives at the zoning level, while P&WC does some local planning for conservation management), the NT still has a long way to go in

achieving standards of conservation planning at the regional, bio-regional and state-wide and national levels.

In some other jurisdictions (NSW, QLD), the EPA is responsible for **periodic reporting** on the current status of environmental threats and values in that jurisdiction. The NT government, public and corporate sectors would all benefit from an EPA that endeavoured to develop and maintain a set of indicators and measurements for the state of the NT environment.

### **Options for staged introduction**

The first step to the establishment of an EPA is to legally define the composition and objectives of an independent board to govern the authority. This body will then be responsible for prioritising implementation of these objectives.

- Resourcing

It seems obvious that the skills and experience of many staff of the OE&H, as well as other departments, and other divisions of DIPE, would be invaluable to a new EPA. However it must be stated that we cannot simply reconstitute the OE&H as the EPA. For one thing, the new Authority will require more staff in order to meet the anticipated objectives of the Authority.

Clearly the EPA described in this submission demands significant additional resources, in both personnel and funding. While the EPA should not be expected to pay for itself, it would be appropriate to attempt to recover costs for some services. All revenue should be allocated to the EPA budget.

Fees for assessment, licensing and approval of proposals with relevant environmental impacts should factor the anticipated scale of impact. For example, fees for processing land-clearing applications should be factored by the area proposed for clearing. Applications for water extraction should be factored by the proposed extraction rate. Further contribution to the significant financial requirements of the EPA could be derived from interest on environmental bonds for significant development proposals. Just as there are mining bonds, rehabilitation bonds should be introduced for aquaculture and other project types.

- Legislative Reform

Integral to the successful implementation of the proposed independent environmental regulator is the appropriate legal enactment of the regulatory powers and inter-departmental relations described. In addition to amending the Environmental Assessment Act, and enshrining the new EPA in appropriate legislation, it will be important to revisit existing legislation, with amendments to establish the desired relationship between existing laws and the new regulator.

**Conclusion**

The NT Greens wholeheartedly welcome the proposal to establish an independent environmental regulator for the NT.

We firmly recommend that the Authority needs to be an independent, legally constituted agency with statutory objects and responsibilities. This legal standing must in turn be supported by appropriate amendments to other relevant existing legislation (the Planning Act, Mining Act, Environmental Assessment Act and others). The EPA needs to be granted an independent board, adequate funding and an appropriate breadth and depth of experience and expertise. The EPA should be formally accountable to parliament and the public, and all decisions and recommendations by the EPA should be transparent and open to appeal by all participants and stakeholders.

**NT GREENS PRESENTATION TO EPA INQUIRY 11 JUNE 2004**

Presented by Matthew O'Reilly

Any argument that the NT environment is in a pristine condition is untrue. We may not have suffered the impacts of broadscale land clearing, intensive Agriculture, massive water extraction or established industrial pollution to the scale of other states. Nevertheless, our environment is in a state of decline. It has been death by a thousand cuts and it is still continuing today. An EPA could reverse this destructive trend and establish processes for reversing our Territory wide loss of biodiversity and ecosystems.

In fifty years time, when other states and other countries are bemoaning their loss of environmental values and biodiversity we have an opportunity to still have our greatest assets here for the world to enjoy. We need to look to the future with the establishment of an EPA with teeth. The value of preserving our rangelands, deserts, savannas, wetlands, rivers and coastlines for future generations to enjoy will far outweigh any short term profits that can be made from their exploitation and destruction.

I will be raising a few key points that we feel need to be addressed in any discussion of an EPA in the NT. I will primarily focus on an EPA involvement in the Impact Assessment process. We believe that it is the three stages of the impact assessment process where an EPA can have the greatest success.

But, firstly:

**1. An Environment and Heritage Protection Authority**

It is simply not good enough to make a new department within the office of Environment and Heritage. What is needed is a completely new statutory authority. We do not however believe that the areas of environment and heritage should be separated. They should remain combined. What should be created is an Environment and Heritage Protection Authority (EHPA) that maintains this connection. Our Heritage is an important part of the Environment and should be recognised as such by being integrated in the new authority. Both areas operate together already so maintaining the connection will actually make the process of changing to an independent Authority simpler with less reshuffling. It makes very little sense to separate the two areas, as they will often have to co-ordinate on development proposals in any case.

**2. Enforcement, Audit and Assessment powers over other Acts**

The EHPA should be given enforcement and discretionary assessment powers over the other Acts and their subsidiary regulations, not just the EIA act.

This should be achieved through making the EPA Act sit on top of all other Acts. It should have the power to intervene in any other Acts where it feels Environmental issues may be effected.

An example of some Acts where an EPA may choose to intervene and enforce laws and regulation are:

- *Water Act,*
- *Noxious Weeds Act,*
- *Territory Parks and Wildlife Conservation Act,*
- *Mining Act,*
- *Pastoral Land Act,*
- *Fisheries Act,*
- *Agricultural and Veterinarian Chemicals Act,*
- *Animal Welfare Act,*
- *Biological Control Act,*
- *Dangerous Goods Act,*
- *Environment Offences and Penalties Act,*
- *Marine Act,*
- *Mine Management Act,*
- *Ozone Protection Act,*
- *Planning Act,*
- *Plant Diseases Control Act,*
- *Soil Conservation and Land Utilisation Act,*
- *Waste Management and Pollution Control Act,*
- *Water Supply and Sewerage Services Act,*
- *Heritage Protection Act,*

This is obviously not exhaustive and other Acts may be enacted in the future, which the EPA may have an interest in.

Minor amendments may be required to some acts to ensure that an EPA is involved in decision making relating to environmental matters.

The EPA should have the power to audit the departments, statutory authorities and independent boards that operate under these subsidiary acts. Eg. The Pastoral Land Board.

The EPA should have the power to enforce these acts and take legal action on breaches independent of other government bodies.

Applications under any of these Acts should be compulsorily referred to the EPA for basic assessment. The EPA would then deliver its recommendations to the relevant approval body. eg. In the case of land clearing on Pastoral Land the EPA would deliver its recommendations to the Pastoral Land board.

The EPA should also be given the power to call in development applications from other bodies if it determines they require a formal Impact Assessment process to be carried out. An example of this may be an application to introduce a new pasture species into the NT or an application to clear a sensitive vegetation community. The EPA would not always be the approvals body but it would have the power to be if it determines that a development is of potential substantial environmental impact.

Any development proposal from Mining to Land clearing to water extraction to the introduction of a new pasture or Horticulture species should have the potential to trigger an Impact Assessment process if the EPA determines that there is a possible threat to the environment. We do not want another Cane Toad, Mission Grass, Rubber Vine, Mimosa or other feral pest damaging the Territory. We also do not want the problems

that are occurring in the Murray Darling to occur here. In the future Public Enquiries such as that being held on the Daly basin Agricultural development should be conducted by an EPA as a formal Impact Assessment process.

An EPA will not undermine existing boards or departments it will simply perform the function of an environmental watchdog. Other government bodies do not have the specialised environmental knowledge to make informed environmental decisions. The EPA will be able to provide this service to all departments and governmental bodies.

### **3. Development by Indigenous people on Indigenous land**

The constraints that will be placed on Indigenous groups attempting to establish development on Aboriginal land will be hard for them to overcome. This is due to their lack of Western Environment expertise and their lack of financial resources. We believe development by Indigenous people on indigenous land needs to be facilitated, but that this should not undermine the Impact Assessment process. We therefore propose that with the new EHPA a position or positions be established whose role is to liaise with Aboriginal organisations and groups and provide them with information on the Environmental approvals process.

Indigenous land makes up nearly 50% of the NT and over 80% of the coastline. This land often has high development potential. In order to facilitate indigenous employment and development we believe it is vital that indigenous people be made aware of environmental requirements. Most industry groups are well aware of impact assessment processes : many indigenous groups are not. It should be a focus of an EPA to better communicate with indigenous people. The Tiwi Islands forestry development is an example where the regular NT assessment process was waived but indigenous groups were then made to go through the Commonwealth process anyway. It is not the place of an EPA to assist indigenous groups with their development applications but it can better communicate in a culturally appropriate way what they are required to do. Perhaps this committee should also recommend that another agency establish a means to assist indigenous development .aspirations through assisting in the IA process.

### **4. Public Participation**

The public participation in an EPA is fundamental. For it to have real legitimacy the Public need to have the right to refer matters to the EPA for review. The public also needs to be kept fully informed of all processes the EPA is involved in.

### **5. Social and Cultural Impacts**

Social and cultural impacts are a major part of environmental assessment and planning that are greatly undervalued and often overlooked altogether. The EPA should treat Social and Cultural impacts with just as much importance as economic and ecological impacts. A failure to do so will undermine public faith in the authority. The only substantial social and cultural impact studies undertaken in the NT to date have been in relation to the Ranger Uranium mine. The original Fox report put a large focus on social and cultural issues. The KRSIS reports of 1998 also focussed primarily on social and cultural impacts.

It is an indictment on the NT environment assessment process that no substantial social and cultural impact studies have been yet been conducted. The sections on social and cultural impacts in most NT EIA and PERs not worth the paper they are written on. There has never been a social impact assessment of the impact of the Gove Bauxite mine, refinery and town. There was no social and cultural impact assessment of the MacArthur River Zinc Mine. The list goes on. It is about time that the NT Government took indigenous matters seriously in the Impact Assessment process. The Great Whale Scoping process carried out in Quebec Canada stands as an excellent example of how indigenous and other social and cultural perspectives can be integrated into the EIA process.

A key part of any IA process, especially in remote areas, should be the measurement of baseline social and cultural data. Without baseline data it is impossible to measure the impacts of developments on indigenous and other populations. This is often very convenient for proponents as they can then not be held responsible for the negative impacts on these communities.

## **6. Environmental Planning**

An EPA should undertake Environmental planning to determine appropriate sites for development before proposals even reach the notice of intent stage. The Howard River Aquaculture proposal and the Glyde Point development are good examples of a lack of good environmental planning. The same can also be said of the proposed Daly River Agricultural developments. An EPA would integrate the mapping and planning roles of Land Use Planning, Vegetation mapping, Bioregional mapping/planning, ecosystem mapping and other environmental planning or mapping systems. It should undertake such environmental planning on a much smaller localised scale than existing planning formats.

## **7. Cumulative impacts**

The cumulative impacts in Bioregions, Catchments, Micro-catchments, Vegetation types, local areas, territory wide and community government areas all need to be considered in environmental protection. The cumulative impacts need to be taken into account in all development or environmental applications. If an existing industry is having such an impact as to preclude further development then it should be offered incentives to clean up its operations to allow further development in the region.

## **8. Appeals process**

The public and proponents should have rights of appeal at the Screening, Scoping, Final report and EPA approval/rejection stages.

At the screening stage appeals should be allowed that argue the scale of assessment should be upgraded or downgraded. Levels of assessment should be: preliminary submissions, PER, EIA or Public enquiry.

At the scoping stage appeals should be in relation to inclusions or exclusions in the Terms of Reference or Guidelines.

At the Final report stage appeals should be in relation to the relevance, quality, reliability and assess ability of scientific data. The level and reliability of social and cultural impact

assessment carried. The reliability, accuracy and quality of economic assessment. Also any other issues that may make the Assessment flawed or inadequate.

The EPA approval 1 rejection appeals process should be based on any of the previous three appeal processes.

### **9. Stronger mechanisms for the EPA and other regulatory agencies to enforce environmental protection commitments.**

The EPA needs strong regulatory backing for it to enforce environmental commitments that proponents agree to in order to proceed with development. At present agencies have little to no power to enforce breaches of conditions. Even when they do have the power the present, precedence does not encourage disciplinary action. This is because it is usually agencies that promote development that are also the enforcement agencies. This conflict of interest results in little to no disciplinary action being taken without public pressure. The example of Ranger Uranium mine is a case in point. There have been over **170** breaches at Ranger detected **by** the Commonwealth watchdog ERISS. DBIRD has chosen to take no regulatory action on any of these breaches. Only recently when workers were contaminated were DBIRD forced to act. The truth of the matter is that a mining agency is simply not prepared to take disciplinary action against miners. We have not been able to find any cases of the Pastoral Land Board or DBIRD taking any disciplinary action under the Pastoral Land Act. Once again a pro-pastoralists agency is not going to take disciplinary action against a pastoralists.

This is the very reason we need an independent EPA.

### **10. Liability for environmental damage**

Directors and parent companies should be held liable for the environmental problems of companies that go bankrupt or insolvent and are unable to fix environmental problems. It seems to be common practice that when some developments fall on hard times they are wound up and left. Rehabilitation very rarely meets the level that proponents originally committed to. The Mt. Todd Gold Mine, various Aquaculture developments throughout the Darwin region, Narbalek Mine and various sand and gravel quarries throughout the Darwin region are all examples of failed rehabilitation plans. In many of these cases the companies that established the development no longer exist and no one is prepared to accept responsibility for rehabilitation.

Ideally for all of these type of developments rehabilitation bonds should be paid right at the start of the development. In the absence of these bonds for some failed developments eg. Aquaculture, Forestry and Quarries the EPA should be given the power to pursue parent companies and company directors to pay the cost of rehabilitation. The public should not be forced to pay for the rehabilitation of private mistakes. The full force of the EPA and the Justice department should be brought to bare in pursuing those ultimately responsible for the environmental degradation.

**11. The EPA should be able to direct mines or other developments to conduct follow up IA every five or ten years if deemed necessary.**

IA can often be out of date after only one year. It is for this reason that where the EPA determines that a development warrants further investigation subsequent IA processes should be established after five or ten years.

**12. The EPA should produce an Annual report but it should also produce monthly newsletters communicated its current activities.**

Monthly newsletters would better be able to communicate with the public about EPA activities. A mailing list should be established including all interested parties and the newsletter should be distributed widely throughout the NT. At present it is very difficult for members of the Public to remain aware of all the Impact Assessment and other environmental review processes active at any one time. A newsletter would rectify this problem. It could be an e-newsletter in order to cut down on paper use.

**13. The impact assessment process needs to be reformed**

- Better scoping process

There needs to be greater time allocated for Public comment on the Terms of Reference (Guidelines). Fourteen days is not enough for members of the Public to adequately respond to the Draft guidelines. One month would be a more appropriate time frame. The scoping phase is one of the most important in the Impact Assessment process. If important issues are excluded from the Terms of Reference then it is very hard to get them corrected in the final report. Dr. Bruce Moon (1997) has demonstrated in his paper on the Queensland Impact Assessment process how the Queensland government has used inadequate scoping procedures to undermine the whole process.

- Option to call for public enquiry

At present there is no legislative framework in the EIA act for the Government of the EPA to call for a Public commission of enquiry. Most other States have this option in their legislation. The NT should also have this option available for major developments. Along with the government or the EPA triggering this type of impact assessment it should also be able to be triggered through a prescribed number of petitioners lobbying the Government.

- Independent production of Impact Assessment

The current system of EIS preparation lacks credibility, largely because it is the developer or consultant chosen by the developer and in its pay who prepares the statement. Thus the statement is not independent and many recent EISs in NT and elsewhere have been shown to contain major flaws. Supporters of the current system argue that only the proponent or its consultant will have adequate access to information to prepare a rigorous EIS. However, the incentive for developers and their consultants to dissemble and to produce false EISs is obviously too great and consequently many projects have been approved with large adverse environmental impacts. Legal mechanisms for requiring proponents to produce adequate data must be developed.

As consultants are chosen by the developers or proponents of large projects, their reputation is often established by their ability to produce an EIS that will lead to approval. Consultants who regularly produced adverse findings would be unlikely to prosper. Thus the current system inherently produces an environment of compliant consultants who often treat public consultation and participation with cynicism and disdain.

The EIS should be prepared independently of the proponent, by consultants who are chosen independently of the proponent or its allies.

EISs would be prepared by a panel (including but not exclusively comprised of experts) under the supervision of a public body such as the Environmental Protection Authority. While the costs of preparation of EISs must be born by the proponents, it is essential that the consultants be chosen independently of the proponents and be answerable to a panel that is not dominated by the proponents or their allies. This contrasts with the present system where consultants are employed to prepare EISs by the proponent of development, so it is unlikely that a no-development option would be recommended or even considered in these circumstances.

- Improved public participation

Decision-making structures and institutions must incorporate mechanisms for public participation. These structures and institutions should also incorporate mechanisms for cooperative regional decision-making to encourage a bioregional approach to planning.

A public inquiry should be mandatory for all large projects and for any project about which a high level of public concern has been expressed (for example, through a prescribed number of signatures on a petition). Public participation should be genuine and efficacious and should continue right throughout the process. Public participation must have a major influence on the outcome.

- Stronger focus on cultural and social impacts

To date there has been a failure to adequately investigate Social and Cultural impacts of proposals. This is generally because EISs are conducted by scientists. Scientists can be said to generally disregard the relevance of the social sciences. This failure to adequately include the social sciences in impact assessment and give them as much weight as "'real science' no longer has a place in modern EIS. The social sciences should be given equal weight as other science in future EISS.

- Cumulative impacts

The cumulative impacts of all previous developments in a region along with the additional impacts of the proposed development need to be evaluated and investigated in all future EISS.

- Free access to IA documents

At present the Public needs to spend up to \$100 to receive copies of EIS documents in hard copy form or view them at a library. This is not good enough. EIS documents and Guidelines should be provided free of charge to members of the Public in order for them to make comment.

- Baseline data to be collected

Planning for ESD requires a recognition of the inherent constraints of the natural environment (e.g. air, water, biodiversity). These constraints can be identified through resource inventory or base-line studies. Such studies should attempt to understand the natural constraints on development (such as areas of significant habitat), with the information incorporated in local and regional planning instruments. It should be mandatory for this information to be taken into account by proponents during the early stages of formulating development proposals.

Moreover, the discretionary powers of decision-makers to approve a development which violates the constraints laid down in the relevant planning instrument should be limited. Baseline data should also always be collected on social and cultural factors. This may include indigenous employment, education, health, incarceration rates, housing statistics, drug and alcohol abuse, family breakdown and maintenance of culture. This sort of baseline data is needed before social impacts can even begin to be predicted. Changes to these statistics after the development has commenced will then be easier to monitor.

- Greater focus on alternatives and systems processes rather than cost benefit analysis and risk assessment.

The use of Risk assessment as a model for EIS is deeply flawed. A far better model to use is alternatives assessment.

*Risk assessment always asks the wrong question: it asks how much damage is safe instead of asking how little damage is possible. Furthermore, risk assessment conveniently never asks, "Is the proposed activity needed?" It never asks, "Is the proposed activity ethical?" It never asks, What will be the cumulative impact of this activity combined with all the other damaging activities to which humans and non-humans are exposed to at this location? And risk assessment never asks, "Are there less damaging ways to accomplish the same purpose?" O'Brien (2000)*

Alternatives assessment requires proponents and EIS consultants to ask all of these questions.

Cost Benefit analysis also has many problems that make it an inappropriate model to use in EIS

- Science in IA needs to improve

As already stated earlier the science used in EIS needs to greatly improve. Fairweather (1994) has grouped the problems with Science in EIS into three groups.

Relevance- focus on things that are easy not important, species lists rather than processes, focuses on habitat loss rather than recovery

Quality- Inappropriate and outdated methods, lack of referencing, poor analysis and interpretation

Accessibility- Not peer reviewed, difficult to access and expensive, duplication of effort

Poor science equals poor EISs

- The screening process should be open to public participation.

At present the Public can only comment at the scoping phase. This should be broadened to include the screening phase.

- Public should have the right to appeal EPA decisions.

The merits, as well as the procedural issues of each EIS, should be open to legal challenge or appeal. As stated earlier Public and proponent appeals should be allowed at all levels of the EIS process.

- Public referral to EPA for EIS

The public should have the ability to refer an issue to the EPA for assessment if it has fallen through the gaps.

- Schedule of designated development

The EPA should establish a schedule of designated development to assist developers and the public be aware of what type of IA process will be required for each development. The EPA, the government and the public should retain the power to upgrade the assessment process if necessary.

- Other issues

The existing Environmental Impact Assessment (EIA) system is essentially a development control system which contains no mechanism for assessment of a project's ecological sustainability. Development control and ESD are not the same and therefore a new method of assessing development proposals and facilitating proactive planning must be devised.

Conventional EIA, which is the focus of the current planning regime, is carried out in response to specific development proposals and usually occurs at the end of the project formulation stage after important decisions have already been made. EIA then becomes no more than an "approvals" process which the proponent of development regards as a hurdle to be overcome before a project can proceed.

An important assumption of the process is that all environmental problems have engineering solutions which are sometimes canvassed in an Environmental Impact Statement (EIS)

The aim of the EPA should be to provide for a precautionary system of Environmental Impact Assessment (EIA) which facilitates Ecologically Sustainable Development (ESD) and moves towards "no waste" pollution outcomes.

We oppose present assumptions about the right to pollute. Development proponents should bear the onus of establishing that their proposals would result in levels of pollution which fall within air and water quality standards. Provision of infrastructure, technology and policy to remedy existing pollution should take precedence over the demands for new measures created by new development.

A prosecutions policy should be adopted in respect of breaches of the Protection of the Environment Operations Act 1997 due to siltation of water courses caused by earthworks associated with logging operations, urban development projects and other major sources of watercourse pollution;

A degraded environment should be seen as a constraint against further detrimental impact, not as an opportunity to down play the new impact's significance;

Proponents must not be allowed to evade responsibility for environmental care through transferring issues from the EIS to an "Environmental Management Plan" or similar instrument;

Monitoring must be based on adequate baseline studies and monitoring regimes must be ongoing (i.e. not a once-off activity) and must include penalties for noncompliance.

If a project which has been approved has worse environmental, social or economic impacts than were predicted in the EIS, a threshold number of signatures on a petition should warrant the calling of a public inquiry. Consultants should be called to justify their forecasts and they should be subjected to penalties at law if their forecasts are found to have been made falsely or misleadingly. The important principle of accountability must be built into the preparation of EISS.

#### **14. Monitoring data of different developments needs to be made public.**

The data obtained from monitoring all approved development proposals need to be made accessible to the public. The public has right to make its own assessment of developments approved by the EPA and the Government. Monitoring data should not be kept behind closed doors where the Public can never see the failures that occur. By the same token making monitoring data public will enable success stories to be transmitted to the public.

#### **15. Science guidelines**

The EPA should produce guidelines for the standard of science expected in IA and development proposals. This should be constantly reviewed to ensure best practice is maintained. Many researchers such as Fairweather (1994) and Fraser (2003) have shown how poor the science used in IP really is. Higher standards need to be set for science in impact assessment. These standards should be set by the EPA and should be subject to ongoing review.

**16. EPA independence must be maintained.**

The EPA board should represent a broad cross section of the community but appointees must show good environmental credentials. It is not good enough to have an EPA board dominated by industry, business and government representatives. Representatives on an EPA board should have sound Environmental credentials. The public should have confidence that the boards focus is environmental protection not developmental approval.

**17. The EPA should not become just an approvals agency.**

The EPA must remain an agency based on environmental sustainability promoting ecologically, culturally and socially sustainable development. Other departments promote and approve economically sustainable development, this is not an EPA's role. Other departments promote industry and development. This is not the role of the EPA. The EPA's role is keep a check on these other departments and to ensure that if development proceeds that it is environmentally, socially, culturally and at times ethically responsible.

**18. The EPA needs to be the approvals authority, not other ministers.**

This is so the EPA is able to pursue legal and enforcement action if commitments are not met or the IA is shown to be fundamentally flawed. Other ministers should maintain the ability to override the recommendations of the EPA but if they do they should be required to justify there reasoning to the public and if need be to a public enquiry.

**19. A new EPA is the way of the future**

In 20 years this type of body (EPA) with the powers we are lobbying for will be common place throughout the world. It makes sense to make this decision now so that we in the NT can be a world leader in protecting our environments and heritage.

**20. EPA should regulate environmental economics**

Environmental economics is already becoming common place through the world. Trading in pollution credits, water, emissions, and salinity is now already widespread. Carbon and Nitrogen trading will also soon become common place. Setting an EPHA in place now will put the NT in a good position when these types of markets become mainstream. If different pollution quotas are allocated for catchments or for the NT as a whole then Aboriginal land holders who own nearly 50% of the NT will have a strong financial incentive to enter into development on their land.

Aboriginal land owners on the Roper River may own quotas for water extraction, carbon emissions, effluent discharge, sedimentation, air pollutant emissions and other environmental economic assets. They may then be able to enter into joint ventures or private enterprise in order to utilise these assets. Aboriginal land owners with few redeemable assets would then have resources with which to commence development.

## SUBMISSION NO. 33

**KEEP AUSTRALIA BEAUTIFUL COUNCIL (NT) INC**

Ms Lorna Woods

*Director*

Received 11 June 2004

**Keep Australia Beautiful Council (NT) Inc. response to the  
Sessional Committee on Environment and Sustainable  
Development's Enquiry into the Efficacy of an Environmental  
Protection Agency for the Northern Territory****CAN AN EPA BE JUSTIFIED IN THE NORTHERN TERRITORY IN THE CONTEXT  
OF VERY LIMITED RESOURCES FOR THE ENVIRONMENT?****What is an EPA?**

This committee, we are sure, is aware that EPAs in other places around the world and interstate take almost every form imaginable. In some cases it is just a name. EPA's can be created by simply renaming an existing department in the way that Queensland did, or by establishing a Government appointed advisory EPA Board in conjunction with a government agency (NSW, Vic, Tas, SA, WA); by appointing a Commissioner for the Environment (ACT); (see page 5 attached) or by putting in place an added bureaucratic but separated powerful agency that operates as independently as the judiciary with no Ministerial input or direction at all.

**Is it affordable at this time in the NT?**

In the context of the Territory's tiny population base, (comparable to Ballarat in Victoria) our vast area, the low level of industrial development and the already limited resources allocated to the environment in the NT, the cost of an additional and no doubt expensive tier over the environmental assessment and monitoring structure that presently exists, it would seem difficult to justify. This is especially so considering the fact that we are aware that there has been very little documented criticism of the competency of the current environmental assessment and monitoring processes being carried out by within the existing Office of Environment and Heritage in the NT.

Only in the event that the community and government of the day were to feel less secure and confident in the ability or professionalism of the officers within the existing agency could the additional, inevitably expensive tier be warranted.

**What about the Commonwealth?**

The matter is further complicated in the N.T. by the role of the Commonwealth in these matters for instance in National Parks administration and in the context of monitoring and regulation of Uranium Mining. It is noted that the Commonwealth has not gone down the path of having an EPA.

**Can an EPA ever be free of political influence?**

The argument that says we presently have a system where politicisation of government agencies can lead to corruption of the system and that we would be free from such risk if an EPA were to be created is plain silly. EPA's can likewise be corrupted by Ministerial appointments. (Most EPA's consist of Ministerial appointments). Changes of governments in other states have seen previous regime's appointees pushed off the EPAs and more "sound" members appointed. It is nonsense to say that if we have an EPA that it will be free of political influence. It would be a brave government indeed that created an EPA but was not influential in some way in the appointment process of its members.

**Can an EPA be more effective?**

It is also a false premise to expect that an EPA will prevent environmental accidents occurring, whether illegal or accidental (as has been claimed in connection with such incidents as the cyanide spill on the Tanami Road. An EPA in Queensland was unable to halt land clearing and intensive irrigation. Tasmania's Environmental Management and Pollution Control Board cannot stop the destruction of Tasmania's native forests.

The question needs to be asked - what difference would an EPA make to better environmental protection in the N.T.? Money for an additional layer might be better spent on real outcomes.

**MONEY FOR ADDITIONAL EPA STRUCTURE MIGHT BE BETTER SPENT ON OUTCOMES**

**Increased regulatory powers and appropriate resource levels** to the present Office of Environment and Heritage could make a difference to the level of environmental protection in the Northern Territory.

It seems clear to us that very significant extra resources, potentially some hundreds of thousands of dollars would be required to support an additional administrative tier such as Western Australia's or South Australia's EPA structure. This money may be better spent on:

1. **Reviewing and strengthening the existing environmental assessment, monitoring and legislative processes available to the existing NT Environment agency.**
2. Separating the Office of Environment and Heritage out from its present entanglement with other agencies and making it a stand alone environment protection agency reporting directly to the Minister.
3. Gathering together all environmental monitoring, regulation, licensing and associated functions from the series of other agencies (e.g. Mines, DBIRD) and placing them under one entity - despite the difficulties and discomfort that might initially be felt; and
4. Environmental initiatives with real outcomes rather than added bureaucratic layers.

Clearly, if an entirely separate free-standing EPA with any integrity were to be created in the Northern Territory, it would require very considerable financial support.

South Australia's EPA has a **budget of \$14 million**. We believe that this kind of money, at this time, would be better applied as described above (points 1 to 4).

### **MINING and OTHER INDUSTRY**

There is no doubt that there is a sound argument for a more appropriate placement of the monitoring and regulatory functions associated with the mining industry, given that it presently sits with the agency that is also charged with promotion of the industry. The conflict of interest is obvious.

In 2001, Queensland decided to transfer responsibility for environmental regulation of mining to their EPA agency. This appears to be working well and could be considered for the N.T.

Other responsibilities considered for transfer could be in the aquaculture area, a growing industry in the N.T., but where environmental regulation is currently with DBIRD.

### **REVIEW THE MATTER AGAIN WHEN OUR POPULATION IS DOUBLED**

The Keep Australia Beautiful Council does not rule out a role for what might be called an EPA in the Northern Territory however the likely costs are not justified at present.

A review of the need for an EPA should occur when the Northern Territory's population doubles and reaches a similar level to that of Tasmania.

**EXAMPLES OF EPA LIKE STRUCTURES ELSEWHERE****ACT - Commissioner for the Environment**

Ministerial appointment  
Reports directly to Minister

**Environment Protection Authority (Manages the Act)**

One person - Director Environmental Protection, overarched by Dept of Urban Services  
Dept of Urban Services CEO heads the Environment Management Authority  
Cooperative measures in place of punitive deterrents

**NEW SOUTH WALES - Environmental Protection Authority**

Statutory body  
10 member board  
Ministerial control  
Releases state of environment report  
Can institute criminal or associated proceedings.  
Independent report to Minister

**SOUTH AUSTRALIA - Environmental Protection Agency**

Independent Board - accountable to Minister  
9 Members.  
CEO is Chair of the Board.  
CEO directly accountable to Board.

**QUEENSLAND - Environmental Protection Agency**

Renamed Government Department  
Answerable to Minister  
3 member board  
9 divisions.

**TASMANIA - Environmental Management and Pollution Control Board**

Independent statutory body  
10 member board (5 members & 5 deputies) appointed by Government  
Chaired by Secretary Department Primary Industries, Water & Environment (DPIWE)  
Deputy Chair - Director Environmental Management  
Two senior bureaucrats from (DPIWE) - members  
Industry, Community and Government members  
Accountable to the Minister

**VICTORIA - Environment Protection Authority and Environment Protection Board**

**EPA = 1 person** - regulation and management  
**EPB = oversight policy and management of EPA** - no regulatory responsibility

**WESTERN AUSTRALIA - Environmental Protection Authority**

Independent Authority  
5 members - and support staff  
Not subject to direction of Minister, however accountable to Minister for delivery of functions and responsibilities.  
Ministerial appointments.  
EPA has an advisory council  
Expertise from Department