LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Environment Protection Bill 2019

9.30 am, Monday 20 May 2019
Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine
Mr Chansey Paech MLA, Member for Namatjira

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

Paul Purdon: Executive Director Environment Protection

Karen Avery: Executive Director Environment Policy and Support

Kathleen Davis: Director Environment Policy

ENVIRONMENT PROTECTION BILL 2019
Department of Environment and Natural Resources

Madam CHAIR: Good morning, everyone, and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public briefing on the Environment Protection Bill 2019.

I acknowledge my fellow committee members in attendance today: the Member for Spillett, Lia Finocchiaro; and via teleconference the Member for Katherine, Sandra Nelson; and the Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee, from the Department of Environment and Natural Resources, Joanne Townsend, Chief Executive Officer; Paul Purdon, Executive Director, Environment Protection; Karen Avery, Executive Director, Environment Policy and Support; and Kathleen Davis, Director Environment Policy. Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee under the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.
If at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record, and the capacity in which they are appearing before inviting Ms Townsend to make an opening statement and then proceeding to the committee's questions. Could you each please state your name and the capacity in which you appear this morning?

Mr PURDON: Paul Purdon, Executive Director, Environment Protection with the Department of Environment and Natural Resources.

Ms TOWNSEND: Jo Townsend, Chief Executive Officer for the Department of Environment and Natural Resources.

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

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

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

Ms TOWNSEND: Thank you, Madam Chair, and members of the committee for the invitation to speak about the Environment Protection Bill on behalf of the Department of Environment and Natural Resources. This bill was introduced Thursday last week so we are very pleased to have the opportunity to talk you through what is a completely new bill. I will warn you in advance that I have a very long opening statement so if you want to cut me short and go to questions, I am happy to do that as well.

Mrs FINOCCHIARO: We will make notes as you speak so we can come back.

Ms TOWNSEND: The Environment Protection Bill 2019 introduces substantial improvements to the Northern Territory's environmental impact assessment and approval system. It represents the first significant step in reforming the Northern Territory's environmental protection and management framework. Before I address the content of the bill, I will give you some background on how we got here today. Environmental impact assessment processes are in effect across the western world and are designed to assess the likely and significant environmental impacts of projects.

The assessment process provides proponents, government and the community with the information required to make decisions on environmental issues. It ensures that environmental harms are avoided, mitigated and managed, or as a last resort, offset. It is important to note that in this context, we are talking about more than the biophysical environment, more than plants and animals.
Environmental impact assessment systems consider the environment in a holistic manner and in addition to biophysical elements, consider impacts on social, cultural and economic matters. For example, impact

assessment considers impacts on natural and built heritage, Aboriginal sacred sites, and impacts that may affect the social functioning of the community.

Australia first introduced environmental impact assessment processes in the early 1970s in recognition that there was a need for a greater consideration of the impacts on the environment from large developments. The first impact assessments in the Northern Territory were undertaken by the Australian Government in the mid-1970s.

After self-government, the Territory continued to use national legislation to conduct impact assessments before passing the *Environmental Assessment Act* in 1982 and establishing environmental assessment administrative procedures in 1984. You may wonder where I am going with this. It was after all 35 years ago. But this history goes to the heart of why we are here today and the purpose of this bill.

The *Environmental Assessment Act* and administrative procedures and the impact assessment system they create are modelled on the Commonwealth's original 1974 legislation. The Territory's environmental impact assessment system has barely changed since it started more than 35 years ago. The act and administrative procedures were updated in 1994 and again in 2003 with minor changes to align with changes at the Commonwealth level. They were again updated in 2012 to give the Northern Territory Environment Protection Authority, or NTEPA, the power to conduct impact assessments.

However, none of these changes were any substance in how the system operates or performs. That is what this is about—improving that. There have been well-documented calls to improve the impact assessment and approval systems since the early 2000s. In 2008, the Environment Protection Authority undertook a comprehensive review of the system and identified a number of improvements. The act was reviewed again in 2015 by Dr Allan Hawke, and in 2017 the NTEPA provided advice on how it could be improved.

Each of these reviews identified that the current environments impact assessment and approval systems in the Northern Territory lack transparency, is overly flexible to the point that it introduces complexity and uncertainty, results in inconsistency and inequity between industry types and similar projects, has gaps that have left some large developments unable to be assessed and not subject to any form of environmental regulatory approvals and results in a lack of consequences for proponents who are considered to have breached their environmental obligations.

The result is an impact assessment system in which there is a general lack of confidence, both within the community and in business. These uncertainties decrease the Territory's investment attractiveness, which in turn negatively impact communities and social outcomes.

The purpose of the bill before you is to address these inadequacies and ensure that the Territory has an environmental impact assessment and approval system that is fit for purpose and supports ecologically sustainable development.

The bill has three primary components. Everything in this bill has been included to support the effective and efficient operation of the impact assessment and approval system. The system is built on the premise that proponents should be responsible for their actions. First, the bill establishes an environmental assessment system. It is important that I point out that the bill before you establishes the requirements for a system and obliges proponents who are undertaking projects where there may be a significant impact to refer their project to the NTEPA for consideration.

The bill does not, however, establish the processes or procedure for impact assessment, the steps that must be followed and the time frames. That is, it does not tell the NTEPA the process it must follow when conducting an assessment. This type of information is more appropriately located in regulations, and there will be environment protection regulations developed to provide this information and give certainty to the community and businesses about the processes that will be followed.

The regulations will specify processes to be used to undertake project-based assessment—that is, assessments that can consider single projects and strategic assessments, or assessments that can consider a range of developments that may occur across a particular area. These processes will include opportunities for the public to review information and provide comments before the NTEPA makes its decision relating to the conduct of an impact assessment.

The regulations will also identify the time frames in which the NTEPA must make decisions and the time frames for public consultation processes.

We have met with a large number of stakeholders—at least 20 different groups—covering a diverse range of interests and industries, to test and share the detail that will be captured in the regulations. This information is important context for the bill and for a holistic understanding of the impact assessment being proposed.

Detail about the commitments that will included in regulations have been shared and will be published on our website shortly. I have for the committee that information here and I am happy to table it. This is information we have shared through our consultation, so it should not be unknown to people.

The bill also contains provisions that allow the minister and Administrator to make declarations about certain environmental matters. These are declarations of environmental objectives and referral triggers, prohibited actions and protected areas. They support the impact assessment system by providing additional certainty to proponents in the community about what needs to be referred to the NTEPA, what types of projects will not be approved in the Territory and locations where certain type of projects will not be allowed to occur.

Second, the bill creates a new environmental approval and this is a significant change. This approval will be granted or refused by the Minister for Environment and National Resources at the completion of an impact assessment process.
The NTEPA conducts the process and provides expert and independent advice on the potential impacts of a project and whether those impacts can be appropriately avoided, mitigated, managed or offset. Ultimately, it is the government that retains the responsibility for determining whether the project should be approved and allowed to go ahead.

The definition of environment and decision-making criteria contained in the bill ensure that these decisions are made in consideration of the biophysical environment, the economy and society. This triple bottom line consideration, for lack of a better term, is at the heart of ecologically sustainable development.

The bill contains a range of matters associated with the creation of the environmental approval, including processes that allow approvals to be amended, transferred between different proponents and suspended or revoked where they are not being complied with.

To be clear, when I talk about the environmental approval, I also mean the conditions that are contained in that approval. The bill contains broad provisions that will allow conditions to manage any significant impacts, whether they relate to biophysical, cultural, social, or health impacts, to be included on the approval. Approval holders will have to comply with these conditions. It will be the department that is responsible for that compliance function.

For the first time in the Territory, this bill will provide for the minister to require an approval holder to develop and implement an environmental offset as a condition of the environmental approval where that is warranted. An offset is a measure that compensates for the cost associated with environmental impacts.

We currently do not have Territory legislation that provides for offsets, which means that our offsetting arrangements between the Northern Territory Government and approval holders are managed through contracts led by other government departments. Being able to include off-sets as a condition of an approval will be easier to ensure that approval holders are complying with any offsetting obligations.

Another type of condition that can be applied relates to environmental bonds. Environmental bonds are payments that are made by approval holders in anticipation of the likely costs associated with remediating and rehabilitating the site of their project. These are payments which can be in the form of cash, cheque, bank guarantee or other financial instrument. They protect government and Territorians.

If an approval holder is unable to meet its obligations to remediate and rehabilitate its environment damage, the bond allows the government to undertake the necessary remediation and rehabilitation work. On the other hand, if the approval holder fulfils all their remediation and rehabilitation obligations, the bond is refundable.

The Northern Territory currently has two environmental bonding arrangements under existing legislation. Mining securities under the *Mining Management Act* and financial assurances under the *Waste Management and Pollution Control Act*.

The bond provisions in this bill have been written in a way to ensure that approval holders are not required to pay a bond if they are required to pay a bond under another piece of legislation for the same environmental impacts. There is no double-dipping.

The bill before you, also allows for environmental levies. Levies are different to bonds. Levies are non–refundable payments which are placed into an environmental protection fund. The funds can then be used to monitor and repair historical and environmental damage or to support research into the environmental impacts of industries or for any other purpose identified in this bill.

The Territory currently has one other environmental levy arrangement, the mining levy under the *Mining Management Act*. As with the bond provisions, the bill has been written to ensure that there is no requirement for approval holders to pay two forms of an environmental levy. These types of financial provisions are common in environmental legislation and they protect ordinary Territorians with what can be substantial costs associated with remediating and rehabilitation environmental damage.

The bill also contains two other tools which are designed to manage the closure and shutdown of a project when it is at the end of its life.

Firstly, there is a system of closure notices that can be used to manage any ongoing monitoring and reporting once a facility is closed. For example, an old landfill that has been closed may still need to be regularly monitored to ensure that there are no impacts on nearby ground water systems. Closure notices will ensure that monitoring occurs and that action to address any impacts that are identified is taken.

Second, there is a system of closure certificates. These are certificates that can be issued by the minister when the approval holder has completed all the required rehabilitation, remediation, closure and post-closure monitoring and reporting activities and that approval holder wants to sell or dispose of the site. These certificates will let the approval holder walk away from the site and transfer liability to the Territory. This system supports environmental bonds being refunded to approval holders while also recognising that, in a practical sense, an approval holder cannot be held liable for environmental damage in perpetuity.

One of the largest sections in the bill relates to compliance and enforcement. The third component of the bill is establishing a compliance and enforcement system. This is the largest proportion of the bill. You may be surprised, or even alarmed, to know that the current impact assessment system contains no compliance or enforcement measures. It operates on the goodwill of proponents who do not want to participate in the system and who fall into a regulatory gap where no environment regulations exist and can currently avoid and ignore the process.

This bill ensures that proponents who are conducting projects that may have a significant impact on the environment will be compelled to participate in public scrutiny and the environmental regulation of their intended actions. This is achieved by obligations for proponents to refer their actions to the NTEPA for impact assessment, accompanied by appropriate offences, powers of the NTEPA to issue stop work notices preventing proponents from taking steps to implement a project that requires impact assessment and offences associated with breaching an environmental approval.

There are also a number of proactive compliance tools. These include powers for the chief executive officer to require approval holders to undertake audits of the impacts associated with their projects, the appointment of environmental officers to conduct inspections and other activities to ensure approval holders and complying and powers for the CEO and environmental officers to issue environmental notices to oblige an approval to undertake certain actions to prevent unauthorised harm.

All of these tools are consistent with any modern environmental management framework. They are also consistent with recommendations from the inquiry into hydraulic fracturing in the Northern Territory. As also recommended by the hydraulic fracturing inquiry, the bill includes a civil penalty scheme for lower penalty offences. This allows the CEO to obtain a civil penalty order rather than pursue criminal proceedings. The scheme allows me to make directions requiring proponents to remediate or rehabilitate environmental harm, and to advertise an alleged offence. This provides for improved environmental outcomes without imposing the costs of a prosecution. In deciding whether to pursue or criminal action, the CEO must consider the seriousness of the alleged breach and the history of a proponent's compliance with legislation.

We are up to the structure of offences and penalties. It is important that I go through this because they are quite specific.

Offences contained in the bill were developed in consideration of similar offences in the Territory or other jurisdictions and have penalties that are of a similar level. Offences that are associated with causing an environmental impact are identified as environmental offences level one through to level four. Level one offences are the most severe and level four offences are the least severe. These offences apply the penalties

identified in the *Environmental Offences and Penalty Act 1996*, which applies a range of penalties at each level.

This means that a proponent that is charged with an offence level one, two or three will be subject to a minimum penalty and may be given a penalty up to the maximum. For a body corporate charged with a level one offence—the most serious—the maximum penalty that can be given by a court is almost $3m, while the minimum penalty is just under $300 000.

The compliance and enforcement system contains elements that could be considered to have impacts on human rights. These impacts are explored in a statement of compatibility on human rights and I am happy to answer any specific questions relating to that statement.

However, I note that the most significant impacts are those that relate to two specific provisions in the bill that remove a person's right against self-incrimination. Both of these clauses relate to providing information to the Department of Environment and Natural Resources. The first is at clause 175 and relates to providing information as part of compliance and enforcement activities. The second is at clause 229 and relates to providing information about incidents that have occurred and may cause material environmental harm.
In both cases, there are protections in the bill that limit the use of information provided so that the person is not penalised on the basis of providing that information. These limitations do not prevent further investigations from occurring or material from those investigations being used to charge a person with an offence.

Provisions of this nature are usual in environmental regulation and recognise that better environmental outcomes are achieved when information, particularly information about incidents, is provided so that appropriate action can be taken at the earliest opportunity. This is far preferable to information about environmental incidents being hidden.

To summarise, this bill contains provisions that will enable the introduction of substantial improvements to the current environmental impact assessment process. It introduces an environmental approval that will ensure that the significant environmental impacts of projects are managed appropriately, and provides a range of compliance and enforcement tools to ensure that proponents and approval holders comply with their environmental obligations.

It does not impose new impact assessment obligations on proponents. Rather, it clarifies those obligations and provides tools to ensure that those obligations are met. I have some information about how we developed the bill but I am happy to defer that after questions and then the last section is where the bill sits in broader environmental reform. Do you want me to talk about that because I think that is a question that comes up often?

Madam CHAIR: Yes, please.

Ms TOWNSEND: Except to say that we have undertaken a very long process of consultation to get to where we are today. I take the opportunity to fill the committee in on where this bill fits within the broader framework of environmental regulatory reform.

In September I participated in a public briefing before the committee about proposed amendments about the *NT Environment Protection Authority Act*. At that time I advised the community that the NTEPA Act was enabling legislation that establishes the NTEPA and that the amendments in the bill were just the first step in proposed environmental reforms that would be coming before the parliament.

This bill is the second step. It improves the Territory's impact assessment and project approval system and ensures that those projects with potential to cause the most significant risk to the Territory's environment are properly assessed and subject to regulation.

The third step will be the introduction of improvements to protect and manage the environment from other less significant, but no less important, environmental impacts. These reforms will look at how the Northern Territory manages its waste and pollution, land clearing and the environmental impacts of mining activities.

Together these three pieces of work are designed to deliver a comprehensive framework of environmental protection and management. Finally, I mention that the department has prepared a range of material explaining the elements of the bill and providing more detail about the proposed regulation.

These documents will be available from the department's environmental reform webpage, hopefully this afternoon. I have some of that documentation to table today. I, along with my colleagues, would be happy to receive questions from the committee.

Madam CHAIR: Thank you, Ms Townsend. I will now open it up to the committee for any questions.

Mrs FINOCCHIARO: This bill does not change how an environmental impact statement is assessed, it just makes it clearer and strengthens enforcement of it. Is that a way to summarise it?

Ms TOWNSEND: There was quite a bit of commentary when we undertook consultation on the draft bill that this was new environmental law and therefore more green tape. What we have tried to make clear is that we already have an environmental impact assessment process and legislation. It is failing Territorians.

This is a reform of that legislation. It has new procedure requirements, it is certainly tighter in its definition. The key change is the introduction of the environmental approval at the conclusion issued by the Environment minister. When I have made that statement, it is to make it clear that it is not a new process. Proponents are doing it now but this improves the system under which it is happening.

Mrs FINOCCHIARO: So it is fair to say it would be a more comprehensive process?

Ms TOWNSEND: The current environmental impact assessment, I think there is a line in here that is absolutely true. It is flexible to the point of creating complexity. It is long, partly because of the offence and penalty provisions, but because it actually sets out a lot of procedure that currently is not there. When you do not have that procedure, it is filled by policy or practise by an NTEPA. We have a very high performing NTEPA but that changes over time, you get different members and different practice. This provides for constancy.

Mrs FINOCCHIARO: The proponent would complete the process, the EPA would then send a report to the minister who makes the ultimate decision? Is that how that would work? The minister does not have to take the recommendation?

Ms AVERY: The EPA does make a recommendation to the minister through their environmental assessment report. The minister makes the decision based on the contents of that report plus other matters as set out in the legislation. The minister is not compelled to follow the advice of the NTEPA.

Mrs FINOCCHIARO: Is there a list in the bill of the types of matters the minister has to consider?

Ms AVERY: Yes.

Mrs FINOCCHIARO: The minister is constrained in some respects as to how to make that ultimate decision?

Ms AVERY: Yes.

Mrs FINOCCHIARO: You mentioned something about the minister can also require a proponent to have a plan for environmental offset, when and how does that kick in? Does it literally just depend on the project and the minister?

Ms DAVIS: Environmental offsets are about residual significant impacts. It is very much a project by project assessment, looking at the nature and type of the residual impacts and whether or not they are appropriate to be offset.

Mrs FINOCCHIARO: At what point in time would the minister make that decision, or can the minister make that decision over the life of the project?

Ms DAVIS: The way the system is anticipated at the moment, the minister would be making that decision at the outset. The EPA would be providing recommendations in its report about whether or not it thought an offset would be appropriate in those circumstances. Then the minister would be able to impose a condition that said the offset was required.

Mrs FINOCCHIARO: That is part of the EPA's report to the minister about whether or not to approve it in the first place? Any recommendation on offset would come up in that report?

Ms DAVIS: Yes.

Mrs FINOCCHIARO: When you say it is not envisaged, does the legislation give the minister the power to part way through a project, impose an offset program?

Ms DAVIS: The legislation contains circumstances in which the minister can change an approval. It identifies those circumstances, including things like if the minister became of new information that they had not been aware of at the time of the assessment. So it is possible that through those types of processes, the minister may identify that the impacts that are occurring are greater than had been anticipated and that an offset might be appropriate.

Mrs FINOCCHIARO: On the levies and bond, could you explain again in more detail. You said there would be no double-dipping on bond and something about double levies?

Ms AVERY: Because bonds and levies exist in other legislation that may be impacted by this legislation, we needed to make it very clear that there would be no double-dipping for either of those. Environmental bonds could not be applied as a condition by the minister to those projects where they already pay a form of bond for the same sort of environmental impacts under other legislation. Currently, those two pieces of legislation are the *Mining Management Act* and the other is the *Waste Management and Pollution Control Act*. The same thing with the levies, although levies are only required under the *Mining Management Act* at the moment.

Mrs FINOCCHIARO: Okay. So, if it was a project that was not governed by those other bits of legislation, this legislation will set a bond. In every instance, or it depends?

Ms AVERY: It will depend. The minister has the power to set an environmental bond. It may be that that environmental bond may increase or decrease over time, so as a project progresses, it may actually increase when there is more potential for environmental damage, and as they remediate or rehabilitate the site, then portions of the bond can be returned to them. It becomes a flexible scheme.

Mrs FINOCCHIARO: Okay. Is there a schedule on bonds, or is it entirely discretionary for the minister?

Ms AVERY: I will hand to Kathleen for this one.

Ms DAVIS: It would be discretionary for the minister to determine whether or not to impose the bond. I imagine that that NTEPA's advice would provide information about when the bond is appropriate. There are just some projects that get assessed that, due to the nature of them, they do not have a great environmental impact at the time of their assessment, so you may not want to impose a bond. How a bond is calculated would be something we would develop guidelines and policy to do. That is consistent with how mining management bonds are developed at the moment.

Mrs FINOCCHIARO: If the minister wanted to impose a bond, there would then be guidelines in which the department would suggest a bond figure?

Ms DAVIS: That is correct.

Mrs FINOCCHIARO: Okay. Bonds are returned once remediation and the life is completed. Then, how will the levies work, which are non-refundable? Is that for every single project that has some form or conceivable environmental risk, or …

Ms DAVIS: Levies are usually applied more on an industry basis. They are usually applied across an industry because that industry is known to have environmental impacts that continue a long time after the activity has closed off. That is why we have a mining levy. The other most common form of environmental levy in Australia at the moment is a waste levy which is applies to the disposal of waste or landfills.

Mrs FINOCCHIARO: What is the format of that? Does a list of industries appear in the bill, or is there a schedule, or is it in regulation? What is the veracity of that, or is it just up to the minister to say, 'I deem that as an industry with a long-term risk so I will impose a levy'?

Ms AVERY: The bill establishes a power for the minister to impose levies. The detail of how, if the minister or the government decided that certain industries would have a levy applied to them, would be contained in regulations through schedules. The idea is that the levy contributes to an environment protection fund that is set up specifically for that industry, so that the funds that go into that industry fund can be used to help with the environmental management of that industry into the future—whether or not that is about cleaning up

specific sites or is a legacy site, or whether it is about undertaking research into environmental technology to help that industry.

Mrs FINOCCHIARO: Where does that money go then? Is it not to general revenue, it sits with the peak body or …

Ms AVERY: It is held in trust by government for that industry and the detail of how those funds will be managed—we are working with treasury and finance to develop a transparent and accountable system for that. The bill identifies the different ways in which the minister can agree that some of that money is expended.

Mrs FINOCCHIARO: The bill in its current form—the minister is not restricted to only impose a levy on a certain industry. The minister of the day could impose it on a project-by-project basis.

Ms DAVIS: We may have to get back to you on that one.

Mrs FINOCCHIARO: That is okay. I am keen to know about the power. It is one thing to envisage it being used a certain way, it is another thing to have that power inherently. That would be great if you could get back to me about if the minister could impose a levy on a project-by-project basis rather than on an industry basis which seems to be the traditional way that it is done.

Mrs FINOCCHIARO: Are you happy to take that one on notice? Great, thank you.

On closure, shut-down and end-of-life, you mention there would be the issuing of a closure certificate and that would allow the proponent to essentially cease any liability for any ongoing environmental impact that may pop up over decades or even longer.

How does that closure certificate work? Is the proponent at the start of the project understanding what is required of them at the end or at the end can the minister impose new hurdles to overcome prior to obtaining that closure certificate?

Mr PURDON: I will try on this one. Usually with a project, at the start of the project when it is being assessed, if it receives an approval there will be a fairly conceptual closure and rehabilitation plan that the proponent has prepared depending on the lifetime of the project.

If a project is very short, that should be far more developed than a longer-term project. As the project proceeds, best practice is usually progressive rehabilitation. That plan should allow for rehabilitation to proceed, for example, while a miner is still operating and still mining.

The actual requirements around a closure notice and when closure is actually achieved would usually crystallise as the project proceeds. I would think an environmental approval from the minister would be specifying at what time the closure criteria needs to be set prior to closure so that the minister, the community and the operator knows with good notice what those criteria are.

Ideally, the community would be involved in setting those criteria and at the point of closure, then the regulator would be able to run through those criteria and do its checks to determine whether or not they have been met.

Mrs FINOCCHIARO: So how does the bill treat that process? Are there time frames? Is that split up by industry?

Mr PURDON: I think Kathleen might elaborate or correct me. The bill sets out the powers to issue closure notices but does not provide the details around timing or processing of that. That would most likely come through approval conditions and guidance policy statements.

Mrs FINOCCHIARO: Not through regulation?

Ms DAVIS: Paul is correct. It would come through the approval conditions because it would be specific to that particular project.

Mrs FINOCCHIARO: How does it work currently? What is the contrast between how closure works now and what is proposed in the bill?

Mr PURDON: I think now it varies depending on the type of project and the legislation that it is regulated under. For the *Waste Management and Pollution Control Act* that I am most familiar with, the closure on a

landfill, for example, there is no such thing as a closure notice but the EPA will use a pollution abatement notice which is a different type of mechanism to achieve the same outcome.

With mining operations, again I do not think there is a closure notice type provision within the *Mining Management Act*. Those closure processes are required through mining management plans and the associated security bond arrangements which are set up under the *Mining Management Act*.

I do not think the closure notice is providing anything that cannot be achieved now under different legislations, making it, to me, a simpler way of doing it. A more specific way of dealing with closure rather than using different mechanisms.

Mrs FINOCCHIARO: In the examples you used, for example a waste facility, would now the closure provisions come under this piece of legislation rather than the *Waste Management and Pollution Control Act*? Rather than the EPA issuing their notice, it would come under this legislation and you would be able to apply for your closure?

Mr PURDON: That is a good question because it helps to answer how this act would apply compared to the *Waste Management and Pollution Control Act*. If we had a big new regional landfill, for example in the Darwin region, that had to go through the environmental impact assessment project and then received an environmental approval from the minister under this act, then the closure notice under this act would apply.

Mrs FINOCCHIARO: So there are legacy issues?

Mr PURDON: Existing or smaller operations that do not need to go through the environmental impact assessment and do not need environmental approval from the minister may still require an approval and a licence under the *Waste Management and Pollution Control Act.* For example, you might be thinking of Humpty Doo transfer station. It might still need closure arrangements but there would not be a closure notice under this act. It is not captured by that act.

Mrs FINOCCHIARO: You talked about penalties and offences and the levels, this is through enforcement through the department. Is it envisaged that there will be additional internal resourcing put into an enforcement division, or however that would operate?

Ms TOWNSEND: It is by me.

Mrs FINOCCHIARO: The CEO has the power, is this vastly different to what currently happens? This is more severe and segmented threshold of breaches?

Mr PURDON: We, within the department, already have a fairly well-functioned compliance enforcement practise and the offences and penalties which are proposed for this bill are not that different to what we are used to dealing with. The issue will be do our current resources allow us to appropriately resource a new bill as well. That is something we need to review. The processes and the nature of offences and penalties we are reasonably familiar with.

Mrs FINOCCHIARO: Can you give an example of something that would be a level one and level four type of breach? Level one is obviously the most severe.

Ms DAVIS: I might tell you the elements of the offence and Paul can probably give you how that relates to an actual circumstance. A level one offence, for example, is causing serious environmental harm. Serious environmental harm is identified as harm that would cost more than $50 000 to rehabilitate. It is not negligible. It would be if a person had acted recklessly in performing conduct that resulted in that type of harm. Paul, do you have an example?

Mr PURDON: There are probably plenty of examples I can think of. I will give you one.

Mrs FINOCCHIARO: It does not have to be a real one, you can just make it up.

Mr PURDON: An operator, whether it is a miner or someone operating a sewerage treatment plant, for example, intentionally discharges polluted water into the Daly River with significant impacts to local fauna.

Mrs FINOCCHIARO: Within those tiers, there is a financial threshold of what that impacts, I think you mentioned $50 000?

Ms DAVIS: The definitions of significant environmental harm and material environmental harm—there is that threshold. The threshold will not be in all offences because not all offences will apply a significant or material offence level. For example, there are level four of three offences which are just causing environmental harm.

Mrs FINOCCHIARO: Okay. Ms Townsend, you gave the example that the lowest penalty for a body corporate—sorry, what did I write? For a level one, two or three, will require a minimum penalty for a body corporate of $300 000. I might have not written that down clearly.

Madam CHAIR: Between $3m and …

Mrs FINOCCHIARO: Yes. The lowest would be $300 000—the penalty for a level one, two or three offence.

Ms AVERY: For a body corporate.

Mrs FINOCCHIARO: For a body corporate, yes.

Ms DAVIS: That is the penalty for a level one body corporate. It is $298 000-and-something. Then, the way the tiering system works is anything under a level four just has a maximum penalty applied. Then a level three has a maximum between the top of the level four and the bottom of a level two.

Mrs FINOCCHIARO: Right, okay. I was going to ask about the future—I guess the staged vision for all of this and the next bill will be reform to the EPA, but that is okay.

That is probably all from me.

Madam CHAIR: Are there any questions down the line?

Ms NELSON: None from me, thank you.

Madam CHAIR: Thank you. Ms Townsend, you mentioned that the public can review comments prior to the NTEPA decision. Do we know what that would look like? Would it be publicly promoted?

Ms TOWNSEND: I will invite Karen to give a more detailed example, but I will summarise because it goes to the heart of some of the questions from the Member for Spillett. It is very important to note that the act and regulations together will prescribe a set of arrangements under which the NTEPA operated, but will also set out when public input and publication of decisions should be made. There is a range of steps through the process.

Essentially, the minister will be making the approval decision or the refusal decision and setting the conditions, but she will be very specifically advised by the NTEPA, which will have gone through a process of seeking public input and getting specific comments from not just the proponent but also from government agencies. That will be published. If the minister wants to do something which is contrary to what she has been advised, that will be visible and she will need to explain that decision. I do not want to give the impression that the minister—the minister has authority under this bill but it is not unfettered power. If she wants to do something different, she will need to account for why there is that difference.

I will see if Kathleen or Karen want to add to that.

Ms AVERY: To confirm what Jo has said, the regulations …

Madam CHAIR: Down the line, we can hear a dog barking in the background. Can you pop your line on mute, please. Thank you.

Ms AVERY: The regulations do or will detail the processes that apply to the different tiers of assessment that will apply under this legislation. That means that it specifically identifies where public consultation will occur and time frames for that and that the information that comes from those public submissions forms part of the EPA consideration throughout the process. From the time a referral is received and accepted by the NTEPA it is then published for community to provide input, as well as government input across NT Government agencies. That helps to contribute to the information available to the NTEPA to decide whether an environment impact assessment is required or not because a project has potential for significant impact.

Also throughout the process, there are opportunities for that community contribution to the process. All the documentation throughout the process is published. Unless there is a legal requirement to not publish

documents or it is genuinely commercial-in-confidence, all material will be published for the community and so forth to see.

The reasons for decision—the EPA when they decide if an environmental impact assessment is required or is not required, reasons for decision are given at that point. The minister must provide reasons for decision and all of those things are published so there is as much transparency as is possible built into the system which also builds that accountability.

As Jo mentioned, it ensures that the minister and the EPA have the authority to undertake the role that they are prescribed under the legislation but in a way that is transparent and has full accountability.

Madam CHAIR: Thank you very much. The last point that I might touch on, Ms Townsend, you mentioned—and I am going to get the wording wrong—that the current act is letting Territorians down. Can you please just rehash what is in place at the moment, what is not delivering what Territorians should be getting and how this will go to strengthening those provisions?

Ms TOWNSEND: I might let the current Executive Director of Environment Protection—who lives with this every day—tell you that.

Mr PURDON: Nice handball. It is a good question and there is a big responsibility to answer it. Apart from the fact that the act is dated, the question is really what does that mean in practice?

One area where the act has let Territorians down is a well-publicised example of—because of the nature of the complexity of the regulatory framework in the Territory and how the current *Environmental Assessment Act* relies on other legislation and other responsible ministers making decisions, we have situations where certain proposals if they are not captured by other legislation in the Territory, then they are not captured by the *Environmental Assessment Act.*

The Port Melville example is the one that stands out there. It is not unique and there could be many examples like that across the Territory where developments, while they are not unnoticed, are not captured by legislation in terms of an approval and because of that and because there is no responsible minister, then the *Environmental Assessment Act* does not legally apply.

Filling that gap by requiring proponents to refer their own proposal to the NTEPA is the way that this act will overcome that particular problem with penalties for proponents who should be referring their proposals to the EPA, if they do not.

The certainty of outcomes resulting from an environmental impact assessment I think, to me, is probably the best improvement in this bill compared to the current process. Currently the EPA completes its assessment process and provides its assessment report to the minister. Of the minister is not the minister responsible for approving or deciding not to approve that particular type of project, they will refer the EPA's assessment report to the responsible minister.

That referral and the assessment report needs to be considered by that responsible minister but the process and the nexus between the EPA's assessment report and then an ultimate approval decision or otherwise is very tenuous. We have a situation where the EPA might finish its assessment in one year and three years down the track that particular proposal is still awaiting to receive its approval decision from the responsible minister for various reasons.

Under the bill, the EPA will provide its assessment report to the environment minister and within 30 days, the Environment minister must have made their decision. The certainty for a proponent in this space is something that really goes to the strength of this bill around investment confidence and certainty around environmental approvals in the Territory. It is something that I hear about from proponents a lot, in terms of time frames and certainty and trying to get investment in their project. That, to me, is the biggest game-changer in this bill for the Territory.

Madam CHAIR: Thank you very much. I ask the committee one last time if there are any further questions.
Mrs FINOCCHIARO: When do we expect the regulations to be ready, because a lot of the finer details of powers will rest with the regs? I image different industries and Territorians are keen to have a look.

Ms TOWNSEND: The regs will set out the process for assessment. Obviously, proponents in the community are pretty keen to see that. We have shared as much as we can of how that will work, but we will not have regulations until August or September of this year.

Mrs FINOCCHIARO: Okay.

Ms TOWNSEND: But, as I said, the information we have provided and are putting online is pretty detailed.

Mrs FINOCCHIARO: Okay, thank you. My last question is about the environmental offset. What other jurisdictions have that same power?

Ms DAVIS: Most jurisdictions now have environmental offsetting provisions—Western Australia, Queensland, the Commonwealth, New South Wales, Victoria, South Australia.

Ms AVERY: I am not sure about Tasmania.

Ms DAVIS: I am not sure about Tasmania.

Mrs FINOCCHIARO: Thank you.

Madam CHAIR: How does this draft legislation compare against all the other jurisdictions? We have just heard about the offset provisions. I understand that the current legislation is dated. There is a lot of reform proposed in this legislation. Will it bring us up to speed with the rest of the country? How does that look for us? Maybe Kathleen?

Ms DAVIS: Yes. It brings us up with a number of other jurisdictions. Our proposed system is very much modelled on Western Australia and South Australia. It is also consist with the Commonwealth approach. We have done that deliberately because there is a process between the Commonwealth and states that allow states to undertake impact assessments on behalf of the Commonwealth if their legislation is compliant. So, we have made sure that is consistent.

Ms AVERY: That last point Kathleen made about that consistency between the Commonwealth legislation and our legislation is a particularly important one for industry which, obviously, do not want to have to go through two processes when one process can satisfy it. We have been mindful to ensure that there is compliance so we have a strong relationship with the Commonwealth to develop those assessments that occur for them.

Madam CHAIR: Thank you very much. Are there any final comments?

Ms DAVIS: If I could just go back to the Member for Spillett's question about levies. The bill says that a levy can apply to a class or persons, so not to an individual project.

Mrs FINOCCHIARO: So, what does that mean? How do you define class of persons?

Ms DAVIS: That will be prescribed in regulations as a class and that would—as we were talking earlier—generally be an industry. You would say this applies to this particular industry or this type of activity.

Mrs FINOCCHIARO: Right, okay. But it is still unclear whether or not that levy could be applied further down the track? Or are you saying the regs will set it up so it more automatic? If it is mining or a waste facility, then that would kick in right from the start?

Ms DAVIS: The regulations would specify when the levy applied. If a particular industry was identified as having a levy applied to it, as proponents came into that industry they would have that levy applied to them.

Mrs FINOCCHIARO: Okay. Thank you.

Madam CHAIR: Thank you very much. Ladies and gentlemen, that concludes our public briefing into the Environment Protection Bill 2019. On behalf of the Social Policy Scrutiny Committee, I thank you all for taking the time to give us some greater detail on the bill this morning.

Thank you very much.

The committee concluded.
