LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13TH ASSEMBLY

SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing Transcript

Environment Protection Bill 2019

8.30 am, Monday 29 July 2019
Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Chansey Paech MLA, Member for Namatjira
Mrs Kate Worden MLA, Member for Sanderson

Participating Member Mr Gerry Wood MLA, Member for Nelson

Witnesses:

- Gillian Duggin: Principal Lawyer/Executive Officer, Environmental Defenders Office NT Inc.
- Eric Lede: Acting Coordinator, Indigenous Carbon Industry Network
  Jennifer Ansell: Chief Executive Officer, Arnhem Land Fire Abatement (NT) Ltd.
- Shar Molloy: Director, Environment Centre NT
  Claire Boardman: Policy Officer, Environment Centre NT
- Neil van Drunen: Manager South Australia, Northern Territory and Policy, Association of Mining and Exploration Companies Inc.
  Matt Briggs: Chief Executive Officer, Prodigy Gold
- Ashley Manicaros: Chief Executive Officer, Northern Territory Cattlemen's Association Inc.
- Dr Janice Warren: Manager Policy and Research, Minerals Council of Australia NT Division
  Brian Fowler: General Manager Northern Territory and Sustainability, Arafura Resources Ltd.
  Nicole Conroy: Technical Director Environment and Team Leader Impact Assessment and Permitting, GHD
- Kevin Stephens: Partner, Ward Keller
  Bradly Torgan: Special Counsel, Ward Keller
- Alex Read: Policy Officer. Arid Lands Environment Centre
- Greg Mc Donald: Manager Minerals and Energy, Northern Land Council
  Diane Brodie: Research and Policy Officer, Northern Land Council
- Joanne Townsend: Chief Executive Officer, Department of Environment and Natural Resources
  Paul Purdon: Executive Director Environment Protection, Department of Environment and Natural Resources
  Alaric Fisher: Executive Director Flora and Fauna, Department of Environment and Natural Resources
  Karen Avery: Executive Director Environment Policy and Support, Department of Environment and Natural Resources
  Kathleen Davis: Director Environment Policy, Department of Environment and Natural Resources

INQUIRY INTO THE ENVIRONMENT PROTECTION BILL 2019

Environmental Defenders Office NT Inc.

Madam CHAIR: Good morning, everyone. 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 that this public hearing is being held on the land of the Larrakia people, and I pay my respect to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatjira, Chansey Paech; the Member for Sanderson, Kate Worden; and the Member for Spillett, Lia Finocchiaro.

At this time I will ask all those present to make sure your phones are switched to silent.

I welcome to the table to give evidence to the committee from the Environmental Defenders Office NT Gillian Duggin, Principal Lawyer/Executive Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and 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 hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

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

Ms DUGGIN: Gillian Duggin, the Principal Lawyer and Executive Officer at the Environmental Defenders Office Northern Territory.

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

Ms DUGGIN: I would, thank you, Madam Chair. Thank you to the committee for the opportunity to appear today in relation to the Environment Protection Bill.

The Environmental Defenders Office is a community legal centre that provides free legal advice to those who want to protect the environment through the law. Through our direct experience in providing legal advice and information to the community and representing our clients in court, our strong view is that the existing legal framework for environmental impact assessment in the Northern Territory is highly flawed.

The current legislation, the *Environmental Assessment Act*, is failing to act as an adequate safeguard against serious environmental, social, cultural and even economic impacts from major developments. It was introduced in 1982, when laws to assess and manage the environmental impacts of development were being introduced around the country for the first time. However, while other jurisdictions have reformed their law significantly over the years to reflect improved scientific understanding and contemporary regulatory standards, this has not yet happened in the Territory.

Based on our experience and that of our clients, the current act is failing because it contains no separate environmental approval and regulatory role, excessive levels of discretion leading to inconsistent and unaccountable decision-making, it has limited genuine opportunities for the public to participate in decision-making and has few checks and balances to deliver accountability and transparency. Over the years various reviews of the Territory's environmental regulations have confirmed our views and have built a clear case for reform.

Most recently the fracking inquiry found that extremely low levels of trust in the Territory's environmental regulatory framework was a key reason why community opposition to the industry is so high. Unsurprisingly, the weaknesses of the current act frequently lead to poor outcomes. Its communities and often those in the remotest parts of the Territory that frequently bear the brunt of damage to their environment, culture and

livelihoods resulting from the laws failure to prevent environmental harm or adequately mitigate the impacts of development. These communities are also the ones that are most excluded from influencing decision-making in Darwin.

The lack of appropriate regulatory tools also means that government and therefore the taxpayer has a high risk of being left with the clean-up task if a proponent does the wrong thing. It is clearly preferable and of course cheaper to prevent environmental harm from happening in the first place rather than attempting to fix it after the fact. A task which can often be impossible in the case of environmental damage.

This reform is long overdue. We therefore strongly support this Bill and think it will recalibrate the Northern Territory's environmental laws to reflect contemporary standards. In our view the key mechanism it introduces to do so is the stand-alone environmental approval to be determined by the Environment Minister, which is supported by an evidence based environmental impact assessment process that is subject to enhance levels of community scrutiny and backed up by strong compliance provisions for when proponents do the wrong thing.

A separate approval and regulator is essential for the integrity of the framework, as was recognised by the fracking inquiry. It is necessary to overcome the inherent conflict of interest that arises from having the Minister responsible for promoting an industry also responsible for its environmental regulation.

Our submission sets out in detail our views on the various positive elements in the Bill. In particular we support the Bill's objects and guiding principles, new protection tools it introduces to fill existing gaps, enhanced recognition of public participation in decision-making and increased levels of prescription and guidance around the EIA process and decision-making processes.

The Bill's enhanced level of prescription provides much greater certainty about assessment and approval time frames and decision-making standards, particularly when compared to the current act.

These various elements all work together to respond to many of the current Act's deficiencies. Of course, we do consider that there are areas for improvement in the Bill and we have proposed various amendments in our submission in response to our concerns.

I will briefly highlight three this morning.

First, we consider there are various weaknesses surrounding accountability and transparency in the Bill. Important community consultation rights are relegated to the regulations and therefore not given the full protection of the Act and are more subject to change. There appear to be gaps in the offence provisions which would undermine how robust the new framework will be, and there are some unorthodox provisions that give proponents, in our view, excessive influence in the decision-making process.

Second, the Bill is inconsistent with recommendations of the fracking inquiry in relation to access to justice. Open standing for judicial review, which was initially included and is a fundamental safeguard for the rule of law has been weakened and third party merits review rights which are critical to support evidenced based decision-making and acting as a safeguard against corruption have been completely removed. These community access to justice provisions must be restored.

Third, despite the unprecedented risk it poses to communities and the economy in the Territory the Bill does not mention climate change once. To ensure that government is appropriately guided to integrate climate change in decision-making and to ensure the Act responds to critical current and future challenges, in our view climate change must be explicitly referenced in the Bill.

In concluding, I would like to emphasise that this is a once-in-a-generation opportunity to transform the Territory's environmental laws so that they properly reflect how valued the natural environment is to all Territorians. Passing this Bill will ensure the Northern Territory has laws that benefit the environment in current and future generations across the Territory.

Thank you. I would be happy to take any questions from the committee.

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

Mr PAECH: Thank you, Ms Duggin—a very comprehensive submission. I think you have left us with not many questions to ask, because you have been quite in depth.

Ms DUGGIN: That is good.

Mr PAECH: I want to touch on something, though. Throughout your submission you did mention the Environmental Defenders Office having some concerns with the level of discretionary power that the legislation would, or could, potentially allow the Minister or department to have.

I am wondering if you can further expand on that, in particular if there were key areas in the legislation as it currently stands where you think there is too much of that discretionary power allocated.

Ms DUGGIN: Sure. The main decision-making power of the Minister is the decision to grant the approval at the end of the environmental impact assessment process and this decision does have good constraints around the Minister's powers. It has a sort of list of matters that the Minister has to take into account in making that decision. But from my review of the Bill, most other decisions at various points along the way do not have similar matters for consideration proscribed.

There is new environment protection tools which are introduced. From memory, they have very limited or no constraints around the discretion there. At various points in time, the Minister has to decide and so does the EPA which way the decision-making process will go and there is not an equivalent level of guidance, even a reference to the objects clause, or something that could set a bit of a test or threshold for what the decision-maker has to consider; pretty much throughout the majority of the Bill, I would say.

Mr PAECH: Therefore, you would indicate that there should be some form of mechanism introduced that the Minister or person approving …

Ms DUGGIN: Or the EPA, yes.

Mr PAECH: … or the EPA, could refer to in terms of being able to work through in order to outline how they have made that decision.

Ms DUGGIN: Yes, absolutely. I mean for example you could link the decision to the objects clause, which obviously frames what the law is trying to achieve. If the EPA and the Minister are required to make their decision that it is consistent with the objects clause that would obviously provide some guidance around that decision-making power.

Mr PAECH: Certainly. Just further, I know that South Australia does have climate change legislation and certainly you have mentioned that the EDO has some concerns around the absence of that particular language being used in this legislation.

Ms DUGGIN: Yes.

Mr PAECH: Therefore, would it not be the view of the EDO that there should, or you would be then advocating or lobbying for an actual climate change legislative framework because it is not in here.

Ms DUGGIN: Yes, that is correct.

Mr PAECH: I am trying to understand, you are indicating that it should be in here because whilst you and I might acknowledge that climate change is real and is happening, I suppose in a situation that there might be a person in the role, in the future, who might not have to take that into account. That is why it should be in the legislation?

Ms DUGGIN: Yes, that is correct. We have previously made a submission in relation to the government's climate change discussion paper that we would argue for a climate change Act to be introduced in the Northern Territory. That would I guess be a simple way to require all aspects of government to take climate change into account in the decision-making. In the absence of that legislation currently existing, perhaps it will be proposed in the future, but we would still argue that it should explicitly be included in this legislation as a highly relevant matter that both the EPA and the Environment Minister need to take into account when making decisions under this Act.

Mr PAECH: Sure.

Ms DUGGIN: Particularly, I think I mentioned in my submission, most laws have a life span of about 20 years before they come up for a whole-scale review. If we think about the time scale that climate change is happening in it is surprising that it would not be included in a modern piece of legislation today.

You will see that some states have introduced stand-alone legislation but even states and territories that have not are integrating climate change within environment and planning laws similar to this.

Mr PAECH: What would the Environmental Defenders Office relationship be with the land councils? I picked up that you do a number of advocacy roles on behalf of remote communities and land trusts. I am trying to ascertain in the event that a group of people living in a remote community or a homeland are not happy with an environmental decision that is coming down, would that be the role for you or a land council?

Ms DUGGIN: That is a complicated question. We are a community legal centre so whoever approaches us for advice, we are willing to give advice to so long as it is a public interest matter. We do not Act for private interests. We would not interfere in what land councils are doing but if a remote community approaches us seeking our advice, particularly about environmental law which is our area of expertise, we would willingly give that advice.

Environment impact assessment laws apply more broadly across the community and across landscapes so it may not be native title holders or traditional owners who have the decision-making powers under the *Land Rights Act* or the *Native Title Act.* There may be other people within those communities who will be affected by the environmental effects of a major project who want to participate in the decision-making process or have concerns about it. That is probably where we could come in.

Mr PAECH: Madam Chair, may I go ahead with one more question? Clause 315 of the Bill talks about the NTEPA and the Environmental Defenders Office has indicated that you would like to see Section 25AA(1) retained. Could you elaborate more around why the EDO would like to see this retained?

Ms DUGGIN: From memory that provision required the NTEPA to consider the principles of ecologically sustainable development in performing its advisory functions. This is quite a broad power and would not apply just to this legislation. It was not clear why that provision needed to be removed through this Bill.

The EPA has a role under this particular Act in providing advice to the Minister but it has other functions. The principles of ecologically sustainable development are at the core of environment protection laws. I argued that it should be retained because I saw no reason for removing it.

Madam CHAIR: Are there any further questions from the committee?

Mrs FINOCCHIARO: Was the Environmental Defenders Officer part of the consultation and development of the Bill?

Ms DUGGIN: Yes we were. We have been consulted on a number of occasions. We wrote an initial submission on the first version of the Bill and draft regulations that were released publicly and we have had a number of consultation meetings with the department.

Mrs FINOCCHIARO: Were you involved with the Regulatory Impact Statement?

Ms DUGGIN: I was consulted by the consultants who prepared that. I had one interview with them.

Mrs FINOCCHIARO: Have you been able to see a copy of that?

Ms DUGGIN: No I have not.

Mrs FINOCCHIARO: Have you seen a copy of the regulations that will accompany this Bill?

Ms DUGGIN: Sorry, I should clarify. I think I have seen an executive summary or some part of that but I have not seen the final RIS.

Mrs FINOCCHIARO: In terms of regulations, have you been able to review the regulations that are proposed to accompany this Bill?

Ms DUGGIN: I have seen the draft version. I have not seen an updated version that follows revision of the Bill.

Mrs FINOCCHIARO: But you have seen the original one?

Ms DUGGIN: I have seen the original version. It has made it difficult to provide comments on this Bill, to be frank. A lot of the substantiative process is in the regulations and a lot of that are important rights, particularly for community participation.

As I point out in my submission, I would prefer to see that detail in the actual Bill rather than the regulations. It is more secure in that it is subject to this kind of process where the regulations do not have so much scrutiny.

Mr PAECH: Just while we are in the submission in relation to the transition periods, the legislation is indicating a three-year transition period for mining or exploration industries. You have indicated that the EDO would prefer to see a transition period of 12 months. Just wanting to understand why you have nominated 12 months when the legislation is indicating three years for larger-scale operations?

Ms DUGGIN: I proposed 12 months simply because three years seemed excessive. My understanding of how the *Mining Management Act* works generally is that mine management plans are updated on an annual basis. In that respect, it seemed appropriate that if it was the same period of time as the transitional period, then when the next approval of the management plan came around, it could transition over to the new legislation.

Mr PAECH: One last one if I may; I wanted to discuss the financial provisions a little bit more. The EDO has indicated that they believe there is some absence in some of the language used in the financial provisions and you have indicated that you strongly support bonds and additional financial considerations in future reforms of the legislation.

Ms DUGGIN: Yes, we generally support the financial provisions. They provide really important tools for the environment portfolio and they put into practice the idea that the polluter should pay. What we were concerned about was that provisions around financial assurances have been removed from the Bill. I understand that they are intended to be included at a later iteration of the reform program but obviously we would prefer to see them now.

From the EDO's perspective all of the powers in the Bill are enabling provisions. There may be concern that there would be doubling up of bond provisions or that sort of thing. They are just powers to enable those things to be imposed. I would not have thought that there was any problem with retaining them in the Bill.

Mr PAECH: So the EDO's position is that those provisions are retained in this Bill?

Ms DUGGIN: Yes, from the exhibition Bill and the ones currently in this Bill should all be retained.

Madam CHAIR: There are no further questions so that concludes our time with you Ms Duggin. Thank you very much for appearing before us this morning and for bearing with us while we endured our IT problems.

The committee suspended.

Indigenous Carbon Industry Network

Madam CHAIR: Good morning and thank you all 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 hearing on the Environment Protection Bill 2019.

I also acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatjira, Chansey Paech; the Member for Spillett, Lia Finocchiaro; and the Member for Sanderson, Kate Worden.

I welcome to the table to give evidence to the committee from the Indigenous Carbon Industry Network Eric Lede, Acting Coordinator and Jennifer Ansell, Chief Executive Officer, Arnhem Land Fire Abatement (NT) Ltd. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

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If, at any time during the hearing, 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 and the capacity in which you appear before inviting you to make a brief opening statement and then proceed to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Mr LEDE: Eric Lede, Acting Coordinator of the Indigenous Carbon Industry Network.

Ms ANSELL: Jennifer Ansell, CEO of ALFA (NT) Ltd, Arnhem Land Fire Abatement.

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

Mr LEDE: Yes, please.

Members of the Social Policy Scrutiny Committee, members of the Indigenous Carbone Industry Network include Indigenous savannah carbon producers, Indigenous project developers and supporting organisations that are committee to growing the Indigenous carbon industry.

Today, the Indigenous Carbon Industry Network requests the Environment Protection Bill is amended to define a carbon offset as being separate to other types of environmental offsets in the Bill, and mandate the offset of greenhouse gas emissions generated by projects under this Bill for every decision-maker and authority throughout the Bill.

Why are these changes crucial to the Indigenous carbon industry? The Indigenous carbon industry involves Indigenous rangers re-establishing traditional savannah fire regimes and undertaking strategic and targeted burns in savannah during the early Dry Season after the landscape has grown throughout the Wet Season. These deliberate fires burn with low intensity and remove the fuel that enables severe large-scale fires in the late Dry Season which would otherwise destroy ecosystems and emit large amounts of greenhouse gases.

The amount of carbon that the Indigenous ranger groups prevent from going into the atmosphere by undertaking these burns are then calculated and sold as carbon credits, with one tonne of carbon dioxide or greenhouse gas equivalent equating to one carbon credit. All development and economic activities have associated greenhouse gas emissions and these can be offset by purchasing carbon credits.

The NT Government and private sector significant investment in the Indigenous carbon industry has enabled us to grow over the last 14 years since our first pilot project. In 2006, the NT Government brokered the innovative West Arnhem Land Fire Abatement, WALFA, project with ConocoPhillips, which then became the landscape scale model upon which the world-leading savannah burning methodology was born.

Since then, the NT Government has striven to continue to facilitate the growth of the Indigenous carbon industry, including developing the Aboriginal Carbon Industry Strategy and co-funding the Indigenous Carbon Industry Network.

Since 2006, the Indigenous carbon industry has rapidly grown to encompass 27 Indigenous savannah burning projects across northern Australia. Last year, in the 2017–18 financial year, these savannah burning projects directly prevented 1.2 million tonnes of greenhouse gas emissions going into the atmosphere, which is equivalent to taking approximately 250 000 cars off the road for a year.

These activities produced 1.2 million carbon credits, which were then sold to the Australian Government through the Emissions Reduction Fund and the voluntary market from a range of organisations to generate approximately $16m.

The profits were then invested back into Indigenous land management activities and remote Indigenous communities, supporting Indigenous ranger groups to care for country through better fire management and empowering communities to generate local jobs on country in remote areas where unemployment is very high.

This home-grown industry has emerged as an important vehicle for Indigenous people seeking to work on their traditional lands and provides a pathway to more job opportunities and training whilst maintaining important connections to family, community and country.

The future of the Indigenous carbon industry however, is now placed under threat by the Environment Protection Bill as it stands. Of particular concern: at no point in the Bill are greenhouse gas emissions referenced. As a result the NT Government is left without a mechanism to guarantee greenhouse gas emission reductions for future development.

It is foreseeable that without this mechanism, future projects may not be required to offset their greenhouse gas emissions. State and territory policies and regulations that support the reduction of greenhouse gas emissions provide certainty to our industry and drive demand for carbon credits particularly in the absence of a federal policy structure supporting an open national carbon market beyond the clean energy regulator's emission reduction fund and the safeguard mechanism.

This Bill as it stands, jeopardises the future of our established and growing industry that the NT Government and private sector have significantly invested in to create jobs and a range of flow-on social, cultural and environmental benefits to remote Indigenous communities across the NT.

In its current form, whether greenhouse gas emission offsets are included are determined by whether greenhouse gas emissions are considered significant. There is a risk this process may be subjective and inconsistent which creates uncertainty for the demand of carbon credits. This puts our demand-driven industry at significant risk. We need to remove risk of subjective and inconsistent decisions that jeopardise our industry. Our future, or lack thereof, is hinged on the certainty and consistency that this Bill legislates around ensuring that greenhouse gas emission offsets are required.

A failure by the NT Government to regulate the greenhouse gas emissions of a proposal, or to contain a regulatory framework for carbon offsets, contradicts the NT Government and private sector's sustained commitments to the Indigenous carbon industry. This is the opportunity to regulate greenhouse gas emissions to provide certainty for our industry.

Therefore, we call on you, the committee, to amend the Environmental Protection Bill to:

1. Define a carbon offset as being separate to other types of environmental offsets under section 125, Environmental offsets framework and guidelines and section 126, Environmental offsets register since unlike other environmental offsets, a carbon offset is clearly measured and regulated by the clean energy regulator through the sale of Australian carbon credit units under the federal *Carbon Credits Act*

2. Mandate the offset of greenhouse gas emissions generated by projects under this Bill for every decision-maker and authority throughout the Bill including section 71, Matters to be considered by Minister in deciding on environmental approval.

Members of the committee, we thank you for your time and for listening to why these considerations are so crucial to provide certainty and consistency to the Indigenous carbon industry given that our industry generates income, jobs and a range of social, cultural and environmental benefits for very remote communities in the NT.

Madam CHAIR: Are there any questions?

Mrs FINOCCHIARO: What other jurisdictions have this type of inclusion in their environmental legislation?

Ms ANSELL: I know that the Queensland Government through their land restoration fund has developed offset strategies for Queensland. I am not sure that the Western Australian Government does.

Mr PAECH: To your knowledge, is the matter that you are referring to recognised in the current federal environmental legislation? Greenhouse gas emissions is often difficult in the space that whilst state and territory jurisdictions may be the polluters it is often the federal government who would need to start that process on the greenhouse gas emissions. Is that something that, to your knowledge, is happening or is being discussed?

Ms ANSELL: When the legislation changed back in 2015, when we went from having the carbon tax to when the carbon tax was abolished, there is no compliance on large emitters to currently offset the carbon

emissions and the government changed towards the emissions reduction fund, where the federal government was actually purchasing carbon credits to meet Australia's international greenhouse gas targets.

In the absence of that federal space, we have actually seen the states and territories, and particularly Victoria and states down south, really step into that space and create a space for this industry to flourish as well—looking towards the Northern Territory, which has been such a leader in the past particularly in relation to the savannah burning industry to also be able to open up that opportunity.

Mr PAECH: Okay. Whilst there is an absence of that in federal legislation you believe that certainly it could be the position of the Northern Territory Government to take that role in the greenhouse gas emissions?

Ms ANSELL: Yes, certainly, in terms of offsetting what is happening in development in the Northern Territory?

Mr PAECH: Sure. In regard to the footprint of the Indigenous carbon industry network, is that predominantly the northern region of the Territory?

Mr LEDE: Yes exactly, it is predominantly the northern region,

Mr PAECH: Okay. Excuse my ignorance, but would it just be isolated to the Arnhem Land region?

Ms ANSELL: No—do you mind if I answer, Eric? The Indigenous carbon projects are right across northern Australia—Western Australia, Northern Territory and Queensland. Currently the main methodology that we all operate under is the savannah burning method—the fire management method—and that is in the rainfall areas above 600 millimetres. You are looking at the tropical savannah regions right across the north.

Arnhem Land, and the company that I work for, currently produces about 50% of all the carbon credits produced under the method. It is a hotspot of carbon credit production, but it is right across the tropical savannahs. I think the Northern Territory represents about 80% of carbon credit production under the method.

Mr PAECH: Fantastic.

Mr LEDE: I will also add there are discussions about moving it further south into the deserts. In order to be an approved project it has to follow a scientifically rigorous methodology. They are undergoing the process at the moment to see if a similar methodology could work in the deserts. That would then push it further right down into the bottom.

Mr PAECH: My patch. Great. I wanted to ask as well, I note that your main concern is around the greenhouse gas emissions and the offsets. Is the Indigenous Carbon Industry Network, and the Arnhem Land Fire Abatement, happy with the remainder of the Bill, or are there particular things that you wish to highlight today? I have picked up on everything you have said, I am just asking if there are any further matters which you wish to raise.

Mr LEDE: These were just the main points that were raised today.

Mrs WORDEN: I note in your submission that obviously you have got the two main things that you are interested in. But you are actually asking that we consider defining the carbon offset as being separate, under section 125. Although when I read that section, it does seem to me that it is quite open and flexible on purpose.

As it currently is, do you see that there is scope within that for what you are asking to occur? Is it just that you are looking for certainty or is it that you think that what is currently there completely excludes?

Ms ANSELL: Not completely excludes—do you mind if I answer? I think one of the things is that it also represents a missed opportunity, I guess, for the Territory to make it really clear and define what things are. Also, as you mentioned already, greenhouse gas emissions, carbon offsets, it is a very unknown and new industry and there is a lot of uncertainty from the business side of things about what it actually means for developments. To have a framework where it is actually really clear, it is not a big scary thing, it is actually something that is doable, achievable, clearly defined and people understand it, it is an important part of the legislative framework.

Mrs WORDEN: But my question is that in its current form—it seems to be that it is deliberately written to be very flexible and for not just carbon offsets but any others that may come in the future, we do not know the

possibilities—can you see that it at least provides some inclusion for what you are looking for? It is just not specifically defined to your industry.

Ms ANSELL: Yes.

Madam CHAIR: Have you been consulted on the development of a greenhouse gas emission framework?

Ms ANSELL: With the Northern Territory Government?

Madam CHAIR: Any government.

Ms ANSELL: Yes, with the federal government—various drafts. Also with the Northern Territory Government on their climate policy and offset strategy.

Madam CHAIR: Fantastic. Thank you.

Mr PAECH: Would you share the concern of the Environmental Defenders Office around the lack of the term 'climate change' in the current legislation?

Ms ANSELL: Yes.

Mr PAECH: Thank you. I just thought I would clarify.

Madam CHAIR: Does the committee have any further questions for ICIN? There are no further questions.

Thank you for appearing before us Ms Ansell and Mr Lede.

The committee suspended.

Environment Centre NT

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

I acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatjira, Chansey Paech; the Member for Spillett, Lia Finocchiaro; and the Member for Sanderson, Kate Worden.

I welcome to the table to give evidence to the committee from the Environment Centre NT, Shar Molloy, the Director and Claire Boardman, Policy Officer. Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

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I will ask each witness to state their name and the capacity in which you appear before inviting you to make a brief opening statement, then proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Ms MOLLOY: I am Shar Molloy, the Director of the Environment Centre NT.

Ms BOARDMAN: I am Claire Boardman and I am acting as a Policy Officer at the Environment Centre NT.

Madam CHAIR: Thank you very much. Ms Molloy, would you like to provide us with a brief opening statement?

Ms MOLLOY: Yes, thank you Madam Chair and the rest of the committee.

We welcome this opportunity to comment on the Environment Protection Bill 2019. Established in 1983, the Environment Centre is the peak community sector environment organisation in the Northern Territory.

As set out in our written submission to this committee, we are supportive of the environmental reform process of which this Bill is a part. Along with other organisations, including the NT Environment Protection Authority we have been advocating for environmental reform for many years.

We are participating in this legislative process because we want to ensure that this environment protection Bill creates a robust and transparent legislative framework to protect the environment for current and future generations of Territorians.

In our view, the proposed environment protection Bill represents a considerable improvement from the *Environmental Assessment Act 1982* and these improvements include; the inclusion of guiding objects and principles aimed at achieving ecologically sustainable development; the requirement for an environment approval from the Environment Minister for all proposed activities with significant environmental impacts; improved opportunities for public participation and access to information; strong compliance and enforcement provisions including civil remedies and increased powers for the EPA; and provisions to ensure industry are held financially accountable for their activities and any potential harm they cause, including environmental protection levies, bonds and environment protection funds.

However, while the Bill is an important step, we hold the strong opinion that various amendments need to be made to this Bill to achieve the aim of ecological sustainable development and to strengthen the public trust in the Territory's environmental processes.

First of all, as it has been a common theme, we believe that it is essential that consideration of climate change mitigation and adaptation must be integrated throughout the Bill. This Bill is set to last for decades. The same decades that according to the intergovernmental panel on climate change are vital to getting the climate crisis under control and avoiding the most catastrophic consequences of climate change.

We need to make this legislation future-proof by making sure that proponents and decision-makers consider the effects of development on climate change and the effects of climate change on the development. While it may be possible under the proposed legislation for the Minister to declare an environmental objective relating to climate change we firmly support giving climate change considerations the protection, the strength and the transparency that comes with being included in the primary legislation.

Companies such as Eni Santos with substantial investments in the Northern Territory have already committed to net zero carbon emission targets for various part of their operations in the coming decades, including climate change considerations in the primary legislation will provide the certainty to the industry and to the public but the Northern Territory is committed to taking action on climate change.

We strongly encourage the committee to insert considerations of climate change mitigation and adaptation in the objects of the Bill, including reference to the Paris agreement obligation to pursue efforts to limit climate change to 1.5 degrees Celsius above pre-industrial levels, and to require the Minister to consider the impact of the proposal on climate change and the impacts of climate change on the proposal when making his or her decision whether to grant an environmental approval under clause 73.

Monitoring the greenhouse gas emissions from a proposed action should also be a default condition of environmental approvals. Like other adverse environmental effects, greenhouse gas emissions should be avoided in the first instance, mitigated in the second while finally offset according to the decision-making hierarchy.

Similarly, we also support strengthening the word in relating to protection by diversity in clause 23, globally and nationally biodiversity's under threat. This Bill needs to ensure that preserving biodiversity is a fundamental consideration in decision-making.

Our second major concern about the Bill is that various aspects of it, as outlined in our written submission, are inconsistent with the recommendations of the fracking inquiry. In particular, we are concerned that the Bill limits standing for judicial review and does not allow at all for third party merits review.

Clause 276(1)(d) of the Bill requires that a person make a genuine and valid submission in order to be able to make an application for judicial review and defined 'genuine and valid' as not being part of a form letter or petition prepared by another body or organisation. One of those organisations would be us.

As a community-based environmental organisation, we often encourage and facilitate citizens using their democratic rights to make submissions by providing a submission guide during the relevant consultations. Citizens then choose to submit. If they did not hold a genuine and valid concern, then it is unlikely that they would bother to do so. At a minimum, we urge the committee to remove the 'genuine and valid' qualifier in clause 276(1)(d). Our preferred option would be to have open standing to apply for judicial review and for merits' appeal of decisions.

As set out in the fracking inquiry, open standing is in place in various environmental statutes and the floodgates have not been opened. If applications are made vexatiously, there are other ways for the court system to handle this. Citizens should be able to hold the government to account under laws made for the benefit of the public.

We therefore submit in support of open standing for both judicial review and for merits' appeals. As a community-based environmental organisation, opportunities for public consultation are essential for our members and supporters to be able to express their views and concerns about development projects. At the end of the day, it is the public—and often already disadvantaged members of the public—who bear the brunt of negative environmental, cultural, social, health and economic costs when development goes wrong.

It is essential that decision-makers are required to provide opportunities for public consultation so that potential issues are raised early on in the process when there is still an opportunity to avoid, mitigate and offset potential negative effects.

In addition, we support requiring public consultation on the regulations that will be prepared under this Act, but it is concerning that there are many points—including how public consultation will be carried out—that have been left to regulation rather than being given the protection of being in the primary legislation.

In order to ensure that the environment protection framework is sufficiently robust, it is therefore essential that the public has opportunities to comment on the details of the proposed regulations. Public consultation is essential to giving effect to the principle of intergenerational equity. We need to ensure that future Territorians have a say on development proposals that affect them during the decades that this Act is in effect.

In our written submission we raised a concern with the definition of 'environment' contained in the Bill and recommended that this definition be amended to be consistent with the definition in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. We reiterate this view here. One of our particular concerns was the emphasis on 'economic' within the definition currently included in clause 6 of the Bill. In contrast we note that several other submitters have questioned whether economic considerations can even be taken into account in the current version of the Bill.

Given that both the current Bill definition and the EPBC Act definition make reference to economic aspects, we are of the opinion that the likely economic effects of development projects can, and should be, assessed as part of the environmental impact assessment process.

As the concept of ecological, sustainable development recognises, economic impacts cannot be disentangled from social, cultural and biophysical considerations. As such, all impacts of a project should be considered together in an integrated manner.

We note that it is clearly envisioned in clause 84 of the draft regulations—which were the subject of previous consultation—that the assessment process could include considerations of economic effects. However, to clarify this issue and strengthen the processes in the Bill, we recommend that a new clause is inserted into the Bill stating clearly that an environmental assessment process must include consideration of the biophysical, social, cultural and economic effects of the proposed development, along with a health impact assessment should that be necessary. It has the benefit of making it very clear in the primary legislation the types of impacts the proponents and decision-makers need to consider.

Some concern has been raised that the EPA is not the appropriate body to consider social and economic impacts. We note in this context that the *Environment Protection Authority Act 2012* allows EPA members to be selected based on their expertise in social and economic analysis. If EPA members do not currently have that expertise, then it would be possible to employ people with that required expertise.

Lastly, we are supportive of the submission of the Northern and Central Land Councils that there would be a requirement for ongoing Aboriginal representation on the EPA in order to ensure that there is adequate expertise to analyse cultural impacts. We also support the idea of an Aboriginal advisory committee to the NTEPA.

We are pleased to see that the role of Aboriginal peoples in caring for country has been recognised in the objects of the Bill. However, we agree with the land councils that further amendments are needed to ensure Aboriginal interests are protecting, including in particular that the Bill requires proponents and decision-makers to effectively engage with Aboriginal peoples in a culturally appropriate manner so as to ensure their free prior and informed consent to developments.

To conclude, our mission at the Environment Centre is to protect and restore biodiversity, ecosystems and ecological processes, foster sustainable living and development, and cut greenhouse gas emissions whilst building a renewable energy capacity. In other words, ecological and sustainable development in the context of climate change. A robust, transparent and evidence based environment protection framework is essential for achieving this vision in the short and long term. Thank you.

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

Mr PAECH: You have answered most of my questions in your in-depth reply. I want to ask you a similar question I asked of the Environmental Defenders Office around the transitions and time lines. In your submission you have not particularly highlighted a period of time that you believe is suitable. Would that be of a similar view to the Environmental Defenders Office of 12 months rather than three years?

Ms MOLLOY: Yes, absolutely. Without a doubt we would definitely defer to the legal opinion of the Environmental Defenders Office. We believe that three years is a long time with different developments that can happen in the Northern Territory so 12 months would be more in line with community expectations. It would be an adequate time to give to industry that this change is happening.

Mr PAECH: Certainly. I was pleased to see in your submission and the Central and Northern Land Council's, the acknowledgement of First Nations people. I want to step that out a little further with you. You are advocating that there be a separate advisory committee to the EPA?

Ms MOLLOY: Yes. I think the in the land council's it would be better placed to talk about that submission. We wanted to make it clear that we do support that. It is imperative that the Northern Territory recognise that international right to make sure there is free prior and informed consent for First Nations peoples. Having an advisory committee highlights that importance and the imperativeness to have the input from Aboriginal people.

Mr PAECH: Certainly. Your organisation's position may be that whilst consent is granted for a particular activity, that it would need to be continually reviewed and discussed with First Nations peoples if activity were to change to a different industry? That constant discussion.

Ms MOLLOY: Absolutely, without a doubt. That continual consultation. As more information become available around impacts of developments—you could look at that in terms of the onshore shale fracking and the consultations that happened years ago and the further information that is available now around the impacts. It is imperative that that consultation is ongoing. Particularly as you move through things like exploration and production. Things change.

Mr PAECH: I have taken a note that you have referenced the term 'environment' and you are recommending that we align with the Commonwealth environmental and biodiversity legislation. Sorry if you have already answered this, but you questioned the definition of 'significant impact'. Do you have a definition that you recommend we refer to?

Ms BOARDMAN: I will just find it in our submission. Yes, we are recommending, in line with the EDO submission, that the phrase 'major consequence' sets too high a bar. We need to take out the 'major' bit of it. Having the qualifier of 'significant impact' is sufficient and having it as 'major consequences' is too high.

Mr PAECH: And the definition of 'major' itself is open to interpretation.

Ms BOARDMAN: Indeed.

Mr PAECH: We are on the same page.

Mrs WORDEN: I note that one of your major concerns, as with others, is the lack of referencing climate change. However, when you spoke about your organisation, one of its major things is around biodiversity. In the Act as it is written currently, that is not referenced either; neither are things like coastal processes and those sorts of—there is nothing specific. Some of the information that we have is that those things are just done automatically anyway through the process.

Ms MOLLOY: I disagree. Even if we have a look at the very recent guidance around creating an environmental impact assessment, under the current Act, it does not make reference at all to climate change. It talks about climate in terms of seasonal variation or extreme events. It does not specifically require proponents and developments to say these are the expected impacts of climate change, this is how our project will contribute to that and then this is how those impacts of climate change will affect the proposal over time.

Even under the proposed draft guidance for creating an environmental impact assessment, there is no mention of climate change at all.

Mrs WORDEN: What about biodiversity? I believe that is not in there either.

Ms BOARDMAN: There is a principle. Clause 23 of the Bill says that biological diversity and ecological integrity should be conserved and maintained.

Mrs WORDEN: But that is not in the objects.

Ms BOARDMAN: Not specifically in the objects but it is in one of the ecologically sustainable development principles.

Mrs WORDEN: Which part are you talking about?

Ms BOARDMAN: Section 23 of the Bill. Our submission is that should be strengthened to be a fundamental concern.

Ms MOLLOY: Previously the NTEPA has put within the considerations of development proposals that if the government does not have a current climate change strategy or policy, then it does not give them the direction about how they are supposed to interpret climate change impacts. We had a climate change policy under the previous Labor government that was then removed by the next government that came in, therefore when you have shifting and changing governments over time, those concerns around climate change can easily be removed and under a Gazette where they do not need to be considered.

What we are saying is that is such a significant impact that it needs to be within that legislation so that over time that it is very clear that no matter the changes and shifts in political governments, that that issue is such an important issue that needs consideration.

Mrs WORDEN: Thank you. I have a second question that relates more to some general thoughts that you put in your submission. One of the issues, it is not an issue that you raised, but you made note that it is essential that adequate resources are allocated in the NT budget implementation of the new laws.

I thought that while you are here we should ask you directly what you see as the current deficiencies, not what you would like to see but what do you think would be required to do this properly?

Ms MOLLOY: First of all I want to say how important an environmental approval by the Environment Minister with environment conditions is.

For example, there was a project, the Sea Dragon hatchery out at Gunn Point. There was a whole lot of conditions that the NTEPA recommended in their referral. Because there is not an environmental approval by an Environment Minister, those environment conditions get attached to a DCA—a Development Consent Authority—which is a planning approval.

First of all you have got a whole lot of environmental conditions which are very difficult to track—who is actually monitoring them; how are those conditions attached to a planning approval actually being monitored by the environment department. Just being able to actually give the resources, for there to be a really clear process, where an environment Minister is giving an approval and then those conditions are very clearly stated on a website and the actual compliance and the monitoring of those is also clearly and transparently communicated on a website as well.

You would need to have the environment department be able to know what those environment conditions are, have the resources to actually monitor them, monitor the compliance and make sure that that information is also being made public.

Mrs WORDEN: That is a process that is being muted by the Act, the changes, so that is the new process?

Ms MOLLOY: Yes.

Mrs WORDEN: Are there gaps? You would think that following on from changes to an Act, that obviously there would be changes within departments to re-tweak things and the resourcing?

Ms MOLLOY: Sure.

Mrs WORDEN: You would think that that would have to happen. If we take that into account, are you thinking there are other areas that are deficient, or is this just a general statement saying, 'Guys make sure your resourcing is right'?

Ms MOLLOY: Yes, it is actually making sure that the resourcing is right. I do not know what you do about going back to all those environmental approvals that you have got attached to all sorts of different current approvals under whether it is the *Mining Management Act* or the *Planning Act*, or whatever it is under the Pastoral Land Board.

There needs to be some transition because some of those developments are going on for years and years. There needs to be some way of actually going, 'Okay, these are already existing environmental conditions that are attached to various different other approvals'. How do you deal with that so that there is transparency around those as well?

I imagine being able to have some extra resourcing where there is that transparency and accountability around those conditions would be important, particularly for some big projects like Project Sea Dragon. There are some major environmental conditions that are being attached to that approval that we would like to be able to see that there is transparency and accountability around how those environmental conditions are actually being monitored.

Mrs WORDEN: The monitoring of decisions once they are being made?

Ms MOLLOY: Yes absolutely, without a doubt.

Mrs WORDEN: Thank you.

Ms MOLLOY: Thank you. I hope that clarifies that somewhat.

Mrs WORDEN: I am sure the department is listening in and I am sure that it is not something that they have not put their minds to.

Ms MOLLOY: Yes, absolutely. I think again that whole transition is a big question that I would imagine needs resourcing as well.

Mr PAECH: I might jump in. I want to pick up again—in your opening statement you made reference to the judicial review. I am curious. Does the NT Environment Centre subscribe to the original proposal that spoke about the judicial review?

Ms MOLLOY: Absolutely. It was incredibly—what would be the word?—disappointing but also quite instructive that it was during the time of the consultation period for the Environment Protection Bill that those rights were removed. One could only imagine that it was through lobbying from industry interests. That shows that industry and lobbyists can influence a process. The fact that those rights to justice were removed during the consultation indicates how imperative and important those balances and checks are there so the community can—we are talking about judicial review. There is a concern that the law has not been applied correctly.

It is high bar to take on a judicial review. That is why we believe it needs to be with open standing.

Mr PAECH: Thank you. Following on from my colleague, the Member for Sanderson's comments in relation to the climate change views. Is it the view of the Environment Centre that having that language acknowledged

in this legislation would set a benchmark for people to then use that legislation as a tool to refer difficult matters for decisions based on that?

Ms MOLLOY: I am not quite sure what you are asking, sorry.

Mr PAECH: I am picking up you made reference before to the NTEPA and bodies like that. I am asking if it is the view of the Environment Centre that if this legislation made reference to climate change, for organisations or statutory bodies they have a point of reference when making those decisions.

Ms MOLLOY: Yes, sorry, thank you that is very clear. Yes, absolutely. Within the statement of reasons the NTEPA has called for that clarity. We believe that the only way to ensure that clarity over time is to put it within the legislation because strategies and policies can easily be removed and undone. Again, you have that same uncertainty about how the NTEPA should be assessing developments in greenhouse gas emissions and climate change impacts.

Mr PAECH: Sure. One last question, and apologies if it is a difficult questions. I wish I had asked it when Gillian was here. I may have to ask her in the break. You made reference to this being decades legislation, which I suppose can be interesting that it can take so long to review legislation. What would the Environment Centre and the Environmental Defenders Office deem as an appropriate time to be reviewing this legislation, given that in the space of climate change or environmental biodiversity, it is a landscape that is changing very quickly and often 20 years is lagging?

Ms MOLLOY: That is right.

Mr PAECH: What would be the view of how often we should be reviewing legislation in this industry and area?

Ms MOLLOY: I will intuitively say. I would wonder about at least every five years? What would you—I do not know. I imagine that there are issues or things arise that we do not see—that there is a way of adjusting this legislation when needed. So, that process needs to be ongoing. Yes, maybe you might have something to add?

Mr PAECH: I am trying to ascertain how we keep legislation contemporised. How do we make sure it is reflecting, given that this is a space we know in the next five, 10, 15, 20, 25 years, we will see dramatic change?

Ms MOLLOY: That is right.

Mr PAECH: I am trying to work out that time line.

Ms BOARDMAN: This legislation could and should last for decades and that it has become much more all-encompassing than the previous legislation. In putting in place decision-making principles about ecologically sustainable development, which is better for a long-term goal, that allows the legislation to shift with what that actually means at a particular time. I note that with environmental objectives if particular issues arose you could put in place different environmental objectives that influence decision-making for particular periods of time.

Going through and changing this sort of framework every five years that is not an efficient use of anyone's time and so setting up the overall framework to last for decades is really important. Staying on the climate change point because as we said, it will be possible to put in an environmental objective about climate change, but we believe in our strong submission is that climate changes of such fundamental importance, particularly over the few decades that this Bill is going to be enforced, that is absolutely must be in there because it has to start shaping the decision-making of proponents and of all statutory decision-makers because we have not been considering climate change and we absolutely had to start integrating that in to all of our thinking about what the meaning of ecologically sustainable development is. Decades—environmental objectives are important but climate change must be in there.

Mr PAECH: Supplementary—again, it does then highlight the need probably for the Territory to have a climate change legislation given that we will see poorer people dealing with the direct consequences of climate change because the rich will be able to buy their way out of it.

You would indicate that climate change legislation would be introduced that would be encompassment over all of the Territory's law—consideration be given.

Ms MOLLOY: Yes, for sure we would be advocating for a climate change legislation but I would suggest that it is probably more challenging to get that up and running and potentially will take quite some time as well. In the meantime it is actually imperative that it be within this legislation. Unfortunately at the moment climate change is still a political issue despite the scientific evidence that shows otherwise and so it is such an important issue that cannot be left to chance.

Mr PAECH: Thank you, Madam Chair.

Madam CHAIR: Are there any further questions?

Ms Molloy, you mentioned in your submission the trust of Territorians needed to be rebuilt in regard to environmental reform. Do you think that the process to reform this legislation had gone some way in doing that?

Ms MOLLOY: It has gone some way in doing that but it was incredibly unfortunate that during the consultation period that those rights for justice were removed and when that happened it was a bit like—here we were thinking that we were getting some way towards having a strong environmental regulatory framework and those kind of actions really do undermine the trust within the community. I would suggest that to some point, yes, but when decisions like that happen that it is hard then not to be cynical.

Madam CHAIR: As a follow on, you mentioned under part two of your submission under concerns—the generous opportunities for industry feedback with only limited ability for members of the public to challenge decisions—can you explain a bit more about that for me please?

Ms MOLLOY: I will start and then maybe Claire will take over for me while she has a look. For example, the actual public consultation and community consultation it is mainly all within the regulations. In terms of the community process and consultation it is limited what is stated within the Bill. Whereas Claire will be able to specifically say where within the Bill that the consultation for industry is within the Bill.

Ms BOARDMAN: On page five of our written submission. Particularly referring sections 71, 72 and 78, the show cause provisions. Basically meaning that if the Minister or the EPA wants to make a decision that is adverse to industry, they have to go through a whole other process of getting industry feedback on that.

In our view the assessment process itself should have already taken into account industry views on those things. There are opportunities for the EPA or the Minister to ask for more information and those provisions are very generous. They make it quite difficult to say no to particular development proposals.

In direct contrast to, as Ms Molloy said, removing access to justice provisions and the opportunity for judicial review by limiting standing for the public. With those show cause provisions, that is the reason why you have appeal provisions if people do not like the decisions that are being made. Having a whole other hoop to jump through if you want to make a decision in the public interest, our view is unnecessary.

Madam CHAIR: Thank you. Does the committee have any further questions for the Environment Centre NT?

There are no further questions. That concludes our time with you. Thank you for appearing before us this morning.

Ms MOLLOY: Thank you Madam Chair and to the rest of the committee. This is an important Bill and we are very grateful that you have given the opportunity for a public hearing.

Madam CHAIR: Ladies and gentlemen, we will have a five-minute break.

The committee suspended.

Association of Mining and Exploration Companies Inc.

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 hearing on the Environment Protection Bill 2019. I also acknowledge my fellow committee members in attendance today: Robyn Lambley, the Member

for Araluen; Chansey Paech, the Member for Namatjira; Lia Finocchiaro, the Member for Spillett; and Kate Worden, the Member for Sanderson.

I welcome to the table to give evidence to the committee from the Association of Mining and Exploration Companies Inc. Neil van Drunen, Manager South Australia, Northern Territory and Policy and via teleconference Matt Briggs, Chief Executive Officer, Prodigy Gold and Chair of AMEC NT Committee. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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

If, at any time during the hearing, 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 appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions. Could each of you please state your name and the capacity in which you are appearing this morning?

Mr Van DRUNEN: My name is Neil van Drunen, Manager South Australia, Northern Territory and Policy for the Association of Mining and Exploration Companies.

Mr BRIGGS: My name is Matt Briggs, Chief Executive Officer, Prodigy Gold and Chair of the NT AMEC committee.

Madam CHAIR: Mr van Drunen, would you like to make an opening statement?

Mr Van DRUNEN: Thank you for the opportunity to appear before the committee.

The Association of Mining and Exploration Companies Inc. is a national industry association that represents over 250 mining and mineral exploration companies nationally. Members are purely focused on hard rock minerals across the value chain and also mineral exploration and developing and operating ongoing mines. AMEC does not represent the gas or petroleum sector.

Please, may I take this time to extend an apology from our Chief Executive Officer, Mr Warren Pearce. He wanted to be here, because this Bill is a priority for our organisation, but unfortunately he had a prior engagement in China, of all places.

The environmental approval is the major approval for a mine. It is the most expensive, time consuming and also the most important for the community. Companies understand the need for a rigorous environmental approval system.

However the following concerns have been raised by our association in our submission because of a perceived lack of certainty and transparency in the draft legislation. These two factors are critical for investment for companies to know—in fact anyone needs to know—before putting their money into an investment, how long it is going to take and what the likely outcome is.

Another underlying reason of why we are concerned is that investment in the Northern Territory overall is low and this is despite the fact that the Northern Territory has some quite frankly geological potential. As per the Department of Primary Industry and Resources' website, there are approximately $6bn worth of projects under consideration which equates to roughly 4000 jobs.

The Northern Territory has some of Australia's largest deposits of uranium, zinc, lead, bauxite, gold, phosphate and manganese. It also has very high potential in other commodities with exploration and development projects under way for copper, rare earths, vanadium, lithium, tungsten, mineral sands, potash and more.

Whether they will be developed will be determined essentially by two factors, three actually if you think about it. The regulatory environment, the economic conditions and investment attractiveness to bring companies to come and invest in the Northern Territory.

I am not sure if you are aware of the Fraser Institute? It is a Canadian-based think tank favoured or forgotten by Ministers nationally, depending on what it is saying. The Northern Territory's overall investment attractiveness slipped in its annual survey to 23rd in 2018 compared to seventh in 2015.

The part of the survey that deals directly with uncertainty regarding environmental regulations was partially responsible for that fall. It fell from 46th in 2017 to 57th in 2018. As a result, this Bill is very important for our association because we would like to see more mining and mineral exploration occurring in the Territory. Thank you.

Madam CHAIR: Thank you, Mr van Drunen. I will now open it up to the committee for any questions.

Mrs FINOCCHIARO: Thank you, Mr van Drunen. Was AMEC involved or consulted in the development of the Bill?

Mr van DRUNEN: Yes.

Mrs FINOCCHIARO: In both incarnations, I suppose because there was the original draft?

Mr van DRUNEN: Yes.

Mrs FINOCCHIARO: Okay. Was AMEC consulted by the consultants who did the regulatory impact statement?

Mr van DRUNEN: Yes, we were also consulted. We would like to see a copy of that regulatory impact statement, if possible. We have said that in pretty much every single one of our statements.

Mrs FINOCCHIARO: Yes. So, it is your understanding it is completed, it just has not been released yet?

Mr van DRUNEN: That is my understanding. My understanding with regulatory impact statements is that nationally they are undertaken by governments to determine what the regulatory impact is of a piece of legislation. Quite frankly, it is a good idea. You work out what the legislation will do to all the other regulations that exist. They are generally done in other jurisdictions at the beginning of the process before they release the legislation.

In the Northern Territory, this process was undertaken two-thirds of the way through, which is a bit unusual, but we are glad that the process was undertaken, regardless of the timing. We would like to see what that document says.

Mrs FINOCCHIARO: Has AMEC seen a copy of the draft regulations either?

Mr van DRUNEN: We saw a copy of the draft regulations in the first incarnation of the draft. However, we have not seen an incarnation in the most recent.

Mrs FINOCCHIARO: That accompanies this one.

Mr van DRUNEN: Has there been a set of regulations released?

Mrs FINOCCHIARO: No, not that I am aware of. They prepared drafts for the first one but they did not work.

Mr van DRUNEN: Which underpins—sorry, just to follow on with that point.

Mrs FINOCCHIARO: Yes, sure.

Mr van DRUNEN: One of the problems with the whole process is that not only has there been a lot of paper flying around—to put it in the colloquial—and it is difficult, especially for our members, to keep a track of what is the current version. We have quarterly committee meetings and we, basically, have to start the committee by explaining where we are at and what has changed. Part of the problem is that this Act is not a complete change. There will be a second tranche after this and there will also be the regulations. So, it is difficult to comment on everything because you do not know how what is written in this will affect the next bit. If you agree to something in the first Act it may have unforeseen consequences …

Mrs WORDEN: What do you mean—sorry—by the second tranche? The Act we have before us is the one we are considering …

Mr van DRUNEN: Yes.

Mrs WORDEN: Are you suggesting that there is another iteration coming?

Mr van DRUNEN: Yes. Not dealing specifically with these topics …

Mr PAECH: Part of the reform.

Mr van DRUNEN: … but part of the reform process. There will be a second Act before August next year …

Mrs WORDEN: Oh, okay. This one is not being amended later, is what you are saying?

Mr van DRUNEN: My problem is I am not sure. I do not have certainty on that. My understanding is there would be a second Bill, and the second Bill will deal with—and I will get this wrong. There will be native vegetation clearing. It will also deal with the mining approvals. There is a third thing it will deal with. There will be consequences for what is written in this Act for that second Bill.

Mrs WORDEN: That is something we can ask the department about later.

Mr van DRUNEN: Yes. The department has been helpful, by the way. I should have said that in my opening statement. The department and the Minister have been helpful.

Mrs FINOCCHIARO: AMEC said in its submission that the objects of the Act are very broad and can cause uncertainty. Could you explain why that is so? You said the definition of 'environment' includes social, economic and cultural. Can you expand?

Mr van DRUNEN: Certainly. This ties in with the decision-making process. The current definition of environment is very broad but the objects that the decision will be based on do not include the economic. Part of our problem is that the current legislation will effectively be a veto on a project, which I know is emotive language, but the concern is that in other states you have multiple Ministers responsible or you have the Minister, say in mining or a pastoralist's case, you have the Minister for DPIR responsible for the Act and then there is the consideration of broader topics.

The concern with the current definition is that it includes economic and social but then in the objects it does not include economic and social. Our worry, quite frankly, is that the economic benefits that a mine brings will not be considered in the approval and that there may be future mines with future environment Ministers that will—and this is no comment on the current environment Minister of course—rule out projects occurring which would not be a good outcome for the Territory.

Mrs FINOCCHIARO: Because of the way it is currently written, the Minister in making their final decision, does not need to have regard for economic impact.

Mr van DRUNEN: Correct. Do you want some further comments on the actual definition?

Mrs FINOCCHIARO: Sure.

Mr van DRUNEN: This was not written in our submission but in our reading of it, the definition is essentially taken from the National Ecologically Sustainable Development Strategy back in 1992. It is a federal document which is partially derived from the Rio Accord, the UN document; that occurred in 1992 as well. That document has cherry-picked parts of the definition from the Rio Accord and not included the parts around the necessity for social and economic developments and the need to go and work on your entire economy, not just consider the economic aspects.

Mr PAECH: That is taking into account though that the Minister may not have approved it for a social or a cultural aspect.

Mr van DRUNEN: True.

Mrs FINOCCHIARO: You also mentioned wellbeing as one of the objects of the Act. Is that the wellbeing of the environment?

Mr van DRUNEN: That is a very good question. I am not sure. It is very ambiguous. I would love to know what wellbeing is. AMEC nationally has raised questions about the use of the word 'wellbeing' in part

because, if this ever gets taken to court, the judge has to use what the legislation says and has to use what the definition of wellbeing is and I am not 100% sure what wellbeing is. I would suggest perhaps a different word should be used.

Mr PAECH: You have referenced the Merriam-Webster dictionary in here so is that the definition of the organisation that you are representing as 'the state of being happy, healthy or prosperous'.

Mr van DRUNEN: Well, that is the definition that the Merriam-Webster dictionary has provided; that is correct.

Mr PAECH: You are referencing it so is that the view or is that what you are indicating that you believe?

Mr van DRUNEN: That is one of the interpretations that a judge or someone could consider.

Mr PAECH: So you would seek further …

Mr van DRUNEN: … clarity …

Mr PAECH: … clarity on what the definition of 'wellbeing' would be in this piece of legislation.

Mr van DRUNEN: Yes. I am not sure that 'wellbeing' should be in the legislation. In fact, I would suggest otherwise.

Mrs FINOCCHIARO: Has AMEC done any—setting aside the fact that the Regulatory Impact Statement has not been published—of its own number crunching around whether or not this legislation streamlines the process for approval and creates efficiencies or whether it increases the regulatory burden in the process? Has it formed a view on if it does one or the other?

Mr van DRUNEN: In part we are unable to at the moment because all of the legislation has not been finalised and the regulations have not been finalised—they have not been published for us to see the final version. I can anecdotally suggest to the committee some numbers that have been sent to me by a company. To be clear, it is not Mr Briggs on the phone but another one of our members interstate.

They have said they are spending roughly $1m and a year's worth of time. That is what they are budgeting for going through the environmental process. That is a lot of money and for these companies it is coming from their shareholders. It is a factor that has to be considered.

Mrs LAMBLEY: How does that compare to other states?

Mr van DRUNEN: It is slightly more but I cannot tell you precisely. I know it is more.

Mrs LAMBLEY: Can I ask a broad question?

Mr van DRUNEN: Yes, sure.

Mrs LAMBLEY: As it stands, how will this legislation affect mining in the Northern Territory?

Mr van DRUNEN: There are two tranches that I can answer that with. Firstly, the general process is affecting investment attractiveness. We need certainty to go and for companies to understand what the process is. There are parts of this Bill that increase certainty and that will be positive. The fact that the process is taking as it is taking, which is always a problem—we would have wanted longer consultation which is probably ironic given what I am saying but we need greater certainty and improved transparency.

At the moment a lot of the legislation has not been worked through yet to its completion. I will be able to answer that question more fully following the second Bill's publication.

Mrs WORDEN: You have talked numerous times about time lines. My understanding of this particular legislation is that it does give you certainty. A Minister has to make a decision within 30 days.

Mr van DRUNEN: Which is good.

Mrs WORDEN: So, you believe that that is a good thing? Although you do not believe it is on the right Minister's desk clearly from your submission.

Mr van DRUNEN: We disagree about the Ministers.

Mrs WORDEN: We might need some fundamental lines in the sand around what we all understand, there are obviously different views from industry right the way across. That is fine, it is a good debate to have and it is the right time to have it.

My understanding is that we are going from an unknown quantity of time for approvals, you have that certainty of 30 days and you would acknowledge that that is a good thing?

Mr van DRUNEN: However, unfortunately while that is a time frame, there are time frames before then which are not as defined. This creates upset.

Mrs WORDEN: Can you be specific?

Mr van DRUNEN: Can I provide that for the committee afterwards?

Mrs WORDEN: Yes, happy to. I would be interested to see where you think time lines could be ascribed. If there are opportunities to do that.

Mr van DRUNEN: I would rather give you a comprehensive list. Our experience in other jurisdictions has been that time can be squeezed using stop the clock mechanisms and it is colloquially called 'throwing it over the fence' when you pass it onto another department.

Mrs WORDEN: Sure.

Madam CHAIR: On that, I will take it as a question on notice. I will ask the Member for Sanderson to repeat her question and will ask if you are happy to accept that and we can include it in the Hansard copy of the record of this public hearing.

Mrs WORDEN: Would you be able to provide written evidence around outside of the 30 days other opportunities within the Act that you see that there are opportunities to provide time lines which would give the industry greater certainty in the full environmental improvement?

Mr van DRUNEN: I would be delighted to.

Mrs WORDEN: Thank you.

Mr van DRUNEN: This nationally fits into a national policy that AMEC promotes across every jurisdiction which is called whole of government time lines. This sets one time frame across the whole top of how long something should take. That is important if you are a mineral exploration company that is small and you have a limited amount of cash. You have to work out how you are going to budget for these things.

Mr PAECH: While we are talking about cash, you have made some comments in relation to the financial provisions that the organisation you are with does not support the introduction of an environmental protection levy, nor do you support the creation of environmental protection funds. You have mentioned in relation to the protection funds that you believe that this is already achieved and funded through government taxes, separate funds beyond the line of sight of parliaments are not necessary.

Mr van DRUNEN: That sounds like something I would write, yes.

Mr PAECH: If you could step out the environmental protection fund and why you are not supportive of that and those separate funds—I am curious what those funds you are referring to are?

Mr van DRUNEN: I am referring to the funds in part seven, division three. These are new funds that are created by this legislation.

Mr PAECH: You believe that they are not necessary because there are other financial commitments being made by the company who is entering in to an agreement.

Mr van DRUNEN: Yes.

Mrs FINOCCHIARO: Bonds are being retained.

Mr van DRUNEN: Yes. There is also the mining remediation fund which is funded by a 1% levy so I am uncertain why there is yet another financial impost.

Mrs LAMBLEY: You are asking for more clarity around the difference between an environmental protection bond and an environmental protection levy—you are questioning whether it is duplicated? That is how I read it.

Mr van DRUNEN: No. I am suggesting that it is duplicative and it should be removed from the legislation because why does the government need to take more money from companies. The companies are going to put money in to the Territory anyway because they want to develop their project.

Mr PAECH: Is it not a different stream? Because this is about protecting, should there be an environmental catastrophe on that area that these funds would be remediated. The funds that you are taking about are being pumped in to the economy in terms of the stimulus of jobs.

Mr van DRUNEN: That is a good question but I would suggest that the bond is by definition therefore any environmental remediation. That is my interpretation of what is written in the Act.

Mr PAECH: To clarify again—the organisation of which you are representing today stands by its position that the environmental protection fund should not be in the legislation?

Mr van DRUNEN: That is correct.

Mr PAECH: And that the only environmental protection funds that should be there are the bonds?

Mr van DRUNEN: No, I am not saying that. What I am saying is that I question why the environmental protection fund is being created in this legislation. AMEC question why the environmental protection fund is being created in this legislation when there are other revenue sources for the government and there are other pools of money. For example, the money remediation fund which has a couple of million dollars already sitting in it and are being used by the Department of Primary Industry and Resources to remediate legacy sites quite successfully at the moment.

Mrs FINOCCHIARO: Under part three, the protected environmental areas and prohibited actions, a new additional power for the government to use. It is AMEC's submission that there is existing legislative frameworks for declaring certain environmental zones, whether it is our national parks or other protected areas and that this adds another layer to that. Could you expand on AMEC's submission in this regard?

Mr van DRUNEN: I can a little. Basically, what we have written there is that there are a number of different mechanisms that already exist and similar to the earlier question, it is unclear why we need another mechanism to protect environmental areas. It is existing processes that we consider work fairly well. Of course, everything can be improved but if it works fairly well, why create another one? We are unclear as to the need. This looks like the potential for greater red tape. For example, with prohibited actions they can be covered by conditions. They can be used in the approval process already.

Mrs FINOCCHIARO: On what basis is AMEC concerned that government projects might not be governed by this legislation?

Mr van DRUNEN: That comment was put in there to make sure that all government projects would be included in this legislation, based on the inter-jurisdictional experience. For example, I am big fan or roads. They make driving a car quite easy, but they involve putting asphalt over the land. That is an environmental consideration …

Mrs FINOCCHIARO: In other jurisdictions, presumably governments …

Mr van DRUNEN: Are not included in all legislation.

Mrs FINOCCHIARO: Okay. We can ask that.

Madam CHAIR: Are there any further questions from the committee?

Mr PAECH: If I could, please elaborate Part 9, Enforcement. You are asking the scrutiny committee to consider whether the provision applies to the entry on to Aboriginal Land Rights Act land, as per section 165. Can you elaborate on that for me, please? For our purposes, what are you asking us to do there?

Mr van DRUNEN: We are asking the question whether or not this legislation combined federal legislation about entry on to Aboriginal land?

Mr PAECH: Combined, did you say?

Mr van DRUNEN: Yes, I did, yes. Whether or not my understanding of the way the Constitution works and how the federal/state hierarchy—I suppose is the word—applies. Would ALRA, being Commonwealth legislation, take precedence over the Territory legislation? That is the question. It is a question that is in our earlier submission to the first draft. We said, basically, check that with the land councils. If the land councils are happy, who are we to talk?

Mr PAECH: Do you have any more, Lia?

Mrs LAMBLEY: In your opening statement you mentioned the ratings in the Fraser report. Were you implying that the drop in the Northern Territory from seventh—I think you said—in 2015 to 23rd in 2018 is related to increased environmental …

Mr van DRUNEN: Uncertainty, yes.

Mrs LAMBLEY: … provisions which has led to uncertainty? Is that what you were implying?

Mr van DRUNEN: I am implying that—for the sake of clarity—there has been greater uncertainty among investors. The Fraser Institute is a perception survey. The perception is that there is greater uncertainty.

Mrs LAMBLEY: Why is that? Could you explain, from your experience in mining, why there is such a decrease in certainty in the Northern Territory in the mining industry?

Mr van DRUNEN: It is because there are time frames. We do not know how this process will work and when it will finish.

Mrs LAMBLEY: It is about this piece of legislation?

Mr van DRUNEN: Partially, yes. But then this is an independent survey done by a Canadian think tank that I cannot speak for, but I am happy to speak about.

Mrs LAMBLEY: Sorry, partially—what other factors are involved?

Mr van DRUNEN: I would be remiss not to mention the royalty structure in the Northern Territory. That has changed substantially. It is now …

Mrs FINOCCHIARO: Is that the hybrid mining tax?

Mr van DRUNEN: Yes, which is incredibly complex. I am not an accountant, I am an economist. To be honest, it is very hard to understand. There is now an ad valorem on the bottom and a profit based on the top which undercuts the original purpose for introducing a profit-based tax, which was that you only had to pay it once your mine was actually going. Now you have to pay the ad valorem at the base.

AMEC's position is that we prefer the Northern Territory to shift to a purely ad valorem system because that would provide certainty and transparency—which are two words I think I have said a few too many times—to miners. The reason why we want that is so you can work it at the beginning of the project so you can factor in all these things into your costs and as a result work out whether or not you are going to mine that deposit or not. It is an investment question.

Mrs LAMBLEY: So they are the main factors?

Mr van DRUNEN: I would say so. On the understanding of the committee I cannot speak for a Canadian think tank.

Mrs LAMBLEY: I have a question about the comments you made about the process the government has used. The fact that it is a two stage process to environmental reform. You say that this feeds concern within the industry and you have talked about the fact that the Regulatory Impact Statement is usually provided before the legislative process rather than two-thirds of the way through.

Mr van DRUNEN: Not provided, undertaken.

Mrs LAMBLEY: Undertaken, sorry. Have you fed your concerns back to government? What response did you get from government explaining their particular process?

Mr van DRUNEN: We have asked to see a copy of the Regulatory Impact Statement and at the moment my understanding is that government is planning not to release this. We are hoping that they will change their mind. There is always hope and there is always time—well there is not always time but there is always hope.

As for the way the process has been done, that has been my understanding a factor of the time frames within which they have had to achieve their outcome. Their outcome is to change the environmental legislation. In AMEC's experience—this is not my experience but our Deputy CEO who is a lot more senior and experienced than I. He was relaying to me that the last time he had seen a two stage Bill like this was the duties legislation. The duties legislation is about a foot long and the reason why is because the duties legislation was so enormous.

Our preference for clarity's sake is that the entire Bill would have been tabled with the regulations purely because then you know what you are dealing with. Rather than at the moment, you have one bit and are going to get the next bit.

Mrs LAMBLEY: Thank you.

Mrs FINOCCHIARO: How many jobs does the mining sector create at the moment in the Territory?

Mr van DRUNEN: I can take that on notice and provide it to the committee.

Mrs FINOCCHIARO: I was wondering about the number of jobs and the royalty figure for those important economic drivers. It is fair to say that mining is one of our single figure sources of own source revenue. It was interested in what that looks like.

Madam CHAIR: Thank you and we will …

Mr van DRUNEN: That is sitting in one of my submissions. I refer to our submission to the first draft in December 2018. I will read it to the committee for clarity's sake: 'Currently the mining industry contributes over $270m, more than 34% of the Territory's taxes and royalties. This makes mining the largest private sector contributor to the 2018–19 Territory budget by over $30m.'

Madam CHAIR: Member for Spillett, does that answer your question?

Mrs FINOCCHIARO: Yes, thank you.

Mr van DRUNEN: So it is safe to say that the mining industry and the environment industry both employ a significant number of people across the Northern Territory. I cannot speak for the environmental industry.

Mr PAECH: I will ask the land council.

Mr van DRUNEN: I am sure the land council can answer that question.

A significant concern that AMEC has with this legislation that has not been touched upon, and it would be remiss of me not to mention, is the question of significance.

This is nationally a problem with environmental legislation and it is a question of what is considered significant. The reason we need to know what is considered significant is, it will determine what level of assessment occurs for your project. What level of assessment will occur for your project determines how much money and time you need to actually get your approval.

Mrs FINOCCHIARO: This is around the significance of the impact of a proposal?

Mr Van DRUNEN: Correct. It has been a constant question that we have asked and admittedly it is a difficult question to answer, however it has not been answered in this legislation or the associated guidelines. In the submission it is on page 7 under the helpful title of significance.

Mr PAECH: Again, this is to seek clarity on the definition?

Mr Van DRUNEN: Yes. Primarily because, if you are a company that is investing in the Territory you need to be able to work out how much money you are going to have to spend to get the project up and whether or not it would be in your interest, your fiduciary responsibility to your shareholders suggests, you should get a greater return for them investing elsewhere, which is not what we want. Ultimately we want people to invest in the Territory.

Mrs FINOCCHIARO: If there was some better structure around the significance test, then a new proponent could look at it and give or take roughly understand where it fits in that spectrum and it will go 'yes, this is worth 12 months and $Xm we will proceed or let us not even bother, we will go to WA or wherever'?

Mr Van DRUNEN: Precisely, or South Australia or Queensland.

Mrs LAMBLEY: How competitive are we in the Northern Territory, when it comes to mining?

Mr Van DRUNEN: It is a difficult question to answer. Unfortunately, you are not as competitive as other states, with the current system and the royalty structure in particular. That is not a new position for AMEC, I can send you all our submissions where we say that. The reality is unfortunately if you have a like-for-like project—we have got a company which is doing up an example for us, I was hoping to have it for you today but I do not because of a variety of things, but I will submit it to the committee later. If you have one deposit, Queensland, is the example, goldmining, they have one of the highest royalty rates in Australia for goldmining, 5% ad valorem. It is still better to mine it in Queensland than to mine it in the Northern Territory.

Mrs LAMBLEY: Why is that so? What makes it so expensive here?

Mr Van DRUNEN: It is because of the costs, the royalties. The other reality with the Northern Territory that you will know, there are isolation issues and you do not have infrastructure. You face similar problems if you are in the middle bit of Western Australia, when you are away from roads and pipelines et cetera, you have extra costs. There is also a smaller workforce base, but given the realities of FIFO that is not as big an issue as it was about three decades ago. That is a benefit of FIFO that is not often spoken about.

Mr PAECH: Would you say, just picking up from the Member for Araluen's comments, the biggest negative driver would be the royalty structure or the infrastructure deficit inland of the country?

Mr van DRUNEN: I would say the royalty structure. The reality with the royalty structure—I wish I had a neater way of saying this—is that it turns investors off before investing in the Territory. They look at it and think they cannot earn a sufficient return. There is also the lack of certainty because it is based off profit which is an alchemy of the commodity price that year. If anyone could pick that I would like to know because I could make a lot of money off that as could you. As a result, it would be easier to go somewhere with a pure ad valorem or a different royalty structure.

Mrs LAMBLEY: Just teasing this out a bit further, the environmental policies and requirements that are within this legislation are not particularly prohibitive of mining in the Northern Territory.

Mr van DRUNEN: I would suggest that is question of implementation. There are parts of this legislation that could be used to be prohibitive but it is a question of how you apply it.

Mrs LAMBLEY: Wait and see.

Mr van DRUNEN: Which is difficult, right? If you are a company that is hoping to invest, you do not have time to wait and see.

Mrs LAMBLEY: It is money.

Mr van DRUNEN: It is money, basically. Exactly.

Mr PAECH: Just one further question. In Part 13, General Matters, you have raised some concern about the limitation of delegation of power. I ask if you can further expand on that and does the organisation you are representing have any issue—we have heard from other submissions about the discretionary ability within the legislation.

Mr van DRUNEN: Can I ask you to clarify that question?

Mr PAECH: I am just picking up in Part 13 …

Mr van DRUNEN: Limitation of delegation powers, yes.

Mr PAECH: … you have provided some suggestions and I think one of them is to table something in parliament.

Mr van DRUNEN: Yes, for transparency purposes, that would be good.

Mr PAECH: Following on from that, we have heard concerns that other submitters had around the legislation being perceived as having too much discretionary power, where it was not set out in a solid process. Is that a position that you share?

Mr van DRUNEN: I can answer that in a sense. One of our concerns with legislation is that the way it is written, there could be discretion taken, but we would prefer there be greater transparency around when that discretion has been taken so that companies and the whole industry can have an understanding of what is being done. I hope that answers your question. I feel like I went in circles.

Mr PAECH: I have to apologise. I asked you a very long question.

Madam CHAIR: In regard to the length of time the environmental reform process takes, you have talked about the impost that it has on the industry. I am very cautious of the way forward and the length of time it takes because it is a balancing Act between making sure the environment is protected and the Northern Territory benefiting where possible. Do you think there is a clear danger perhaps that if we do not resolve the legislation going forward that the impost on the industry and the lack of attraction and investment will continue?

With the delay and everything we are going through at the moment—picking up on the words you have used so far. What would be the best way forward for the industry to see us progress to make sure we can benefit for the Territory going forward?

Mr van DRUNEN: It is a catch 22 situation, now that the Pandora Box has been opened. On one hand we would like sufficient consultation so we know everything in the legislation and how it will be implemented. On the other hand, we would like it all done tomorrow, please. But yes, we would like it done as quickly as possible, but with as much fulsome consultation as possible.

Our experience with the Department of Environment and Natural Resources has been positive …

Madam CHAIR: Excellent.

Mr van DRUNEN: The staff have been very good and have been willing to take phone calls and meetings with industry.

Madam CHAIR: Thank you very much. Does the committee have any further questions for Mr van Drunen? No. That concludes our questions for AMEC. Thank you very much, Mr van Drunen and Mr Briggs on the phone.

The committee suspended.

NT Cattlemen's Association Inc.

Madam CHAIR: Thank you for joining us for the Social Policy Scrutiny Committee public hearing today. I am Ngaree Ah Kit, Member for Karama and the 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 Araluen, Robyn Lambley; the Member for Namatijra, Chansey Paech; the Member for Spillett, Lia Finocchiaro; and the Member for Sanderson, Kate Worden.

I welcome to the table to give evidence to the committee via teleconference from the Northern Territory Cattlemen's Association, Ashley Manicaros the Chief Executive Officer. Thank you for coming before the

committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

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

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

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

Mr MANICAROS: My name is Ashley Manicaros and I am the Chief Executive Officer of the Northern Territory Cattlemen's Association.

Madam CHAIR: Thank you Mr Manicaros. Would you like to begin with an opening statement?

Mr MANICAROS: Certainly. The Northern Territory Cattlemen's Association's primary concern as it has always been since the first draft is that the proposed environmental protection legislation will have the unintended consequence of adding considerably to the overall reporting and financial burden associated with any development we will be required to undertake the processes associated with a new Act.

These types of development could include but are not exclusive to the non-pastoral use diversification of the pastoral estate. Such diversification includes the planting of crops, tourism, forestry and aquaculture. These concerns relate to the preparatory work for such venture including tree clearing and associated approvals. We believe it is highly likely that the new legislation will require project or development proponents to provide a significant amount of additional information to acquire an environmental approval after referral compared with the current legislation, and as a consequence increased costs.

Although we acknowledge the number of referrals is likely to increase only slightly, it is a major concern that there are still unpublished triggers for referral and that is particularly relevant around land clearing. The new legislation requires that referrals are either accepted as being required under the published triggers or refused if they do not meet any of those triggers in inverted commas, and therefore the referral was not required to be made.

If you add this alongside the existing system as to whether a referral is required to be processed under the Act, it involves consideration as to whether a public environment report or an environmental impact statement is required. In many cases, those additional processes are not required and the process is at an end, albeit with conditions imposed in some cases.

The new legislation will also mean a significant increase in cost of undertaking any development in our opinion which requires an approval to be issued. These costs will be likely to include a bond for the development to be lodged, an environmental levy imposed, potentially financial assurance to be provided once the project has been completed and in most cases is likely that an environmental audit will be required to be undertaken, at least at the end of the project if not during the project as well.

This will make it extremely difficult to cost projects and add to the overall level of uncertainty for developers. This new legislation will not only increase the red and green tape associated with development projects but will also add significantly to the cost of development both in regard to bonds and levies but also to the development of the amount of reports and audits that will be required.

As a consequence, the proposed Act has separate environmental licensing, bonding, auditing enforcement and transfer approvals. This means a unified approval now becomes two approvals with two separate licences and conditions. The Environment Minister potentially confined by the NTEPA has a veto over all major projects—and I will expand on that in a moment—given the broad definition of environment and that major projects continually affect the environment there is likely to be large degrees of regulatory overlap and departmental duplication in regulation, and the Environment Minister guided by the department and NTPEA must acquire skills to regulate all major projects.

Singularly, we actually oppose the concept of an environmental approval vested with a singular Minister. In this instance, the Minister for Environment. The scope of power this legislation grants to the minster is quite breath-taking and there is no other Australian jurisdiction, of which we are aware, in which so much authority is granted to a Minister with portfolio of the Environment. Such a proposal would have been dramatically opposed where it being suggested by those from opposite of political persuasions.

Concerns are also held in relation to the new proposed powers associated with the CEO and environmental officers who do not appear to have to be trained or qualified as environmental investigators but will be able to impact heavily on a project if in their view the project is not being undertaken in an environmentally sensitive or sustainable manner. This will no doubt impact negatively on the competiveness of the NT to attract developers. All of the new cost borne by developers will, of course, be passed on to the end consumer which will also add to the overall affordability of living in the NT.

For us, here in the NTCA with diversification being something that we are interested in as an industry, we see it as it being a major potential retardant to that occurring simply and easily. That is all I have to say at this stage.

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

Mrs FINOCCHIARO: The NTCA's submission raises the concern that this will add considerable cost and possibly add time to the environmental approval process—has NTCA got any information on that as such? Or is that just what has been fed back from your members?

Mr MANICAROS: We have not done any costings on it, but when you are having to increase the number of reports that need to be prepared, for example two to five, then that will involve additional costs. We think that the biggest issue facing that regarding cost is this unknown in relation to land clearing—a simple land clearing application—may in fact be a trigger and as a consequence there will need to be a full environmental impact statement take place.

Mrs FINOCCHIARO: Currently using that example, how lengthy or expensive is the current process, say for land clearing?

Mr MANICAROS: It can cost anywhere from $15 000 to $20 000, up to $200 000, depending on what actually has to be done.

Mrs FINOCCHIARO: Wow! I am sorry, it is envisaged that this process could increase that significantly?

Mr MANICAROS: Yes, it could because, as it stands now, the pastoralists, for example, need to present what is the environmental sensitivity of the land. To give you an idea, that can take place in an area as small as an acre or as large as 25 000 or 26 000 hectares.

Mrs FINOCCHIARO: You mentioned in your submission—I think it is in paragraph four—unpublished triggers for referral. What do you mean by that?

Mr MANICAROS: As it stands now—again because of the catch-all way the legislation works, particularly about land clearing which is where I will focus on because that is an area of substantial concern for the members of the NTCA—an area that could be one acre in size could be considered environmentally sensitive and therefore, broader studies need to be done—or larger.

When I say there are triggers, there are no published triggers to say if you exceed a certain size of land clearing, for example—let us say that is 5000 hectares—it will automatically require an environmental impact statement.

No one is really sure exactly what the triggers are to move you to the next level.

Mrs FINOCCHIARO: Right. Okay, thank you. Was NTCA consulted during the development of this Bill?

Mr MANICAROS: We made several submission in regard to it. We have also had one or two face-to-face meetings where some of our concerns we had raised in our submissions were discussed. At the end of the day, though, some of those concerns have not been addressed. We still do not know the triggers, which we think is a major problem.

The other issue is this singular decision-making process effectively sits with the Minister, which we have concerns with.

Mrs FINOCCHIARO: Do you want to expand on that? Generally speaking, everyone has had a problem with this in one way or another. What is NTCA's main concern with that singular Minister?

Mr MANICAROS: There has to be seen a level of scrutiny associated to it and a level of depth associated with the decision. My and the industry's concern with it is, for example, this Bill is not necessarily about this individual Minister or government, but about future governments. That is what this legislation is about.

I will look backward for a moment and say to you, 'How comfortable would the Northern Territory public have been with any one of the individuals in the previous Cabinet in the previous government having sole responsibility for environmental approvals?' I argue that the general public would not have been particularly satisfied with that or confident in that system. Yet, as the public and an industry association, we are being asked to support a piece of legislation where an individual Minister will be given that sort of power. That power will rest with that Minister moving forward in future governments.

That is the problem with it. I do not necessarily know that that decision-making process sits within the Westminster system very well.

Mrs FINOCCHIARO: Thank you. Was NTCA consulted by the consultants doing the regulatory impact statement?

Mr MANICAROS: Yes. We had discussions with them. They were, from recollection, an interstate firm. They pointed to an example. We had discussions. We expressed to them the issues of regulations, the regulatory environment and the triggers. We also raised the concern about the singular Ministerial decision-making. They references it to a system that is similar in Western Australia. But that was the extent of it.

Again, whilst our concerns have been presented, I do not know that the final Bill reflects what they actually are.

Mrs FINOCCHIARO: Has NTCA seen a copy of the final version of the RIS?

Mr MANICAROS: No. We have commented on what has been published to date. I do not know if there is a different final version. But the short answer is yes.

We have not seen—unless there is another final version, but we have seen what has been published.

Mr PAECH: I wanted to follow up, through all our submitters this morning, people have made mention of climate change and its absence in the Bill. Are you able to provide what the Northern Territory Cattlemen's Association's position on that matter and if you believe that should be referenced in the Bill.

Mr MANICAROS: The issue of climate change in the Northern Territory and whether or not it comes into that Bill is, from our industry's perspective, an interesting argument. The Northern Territory Cattlemen's Association takes the view that in fact the Northern Territory is a carbon sink, certainly through our agriculture sector.

Less than 1% of the Northern Territory is land-cleared, for example. As part of our regular land management process, we are constantly regenerating our pasture, not just wearing it down moving on to something else, it is being regenerated. Therefore we are adding to the overall environment and the management of carbon within our environment.

In terms of whether or not it should be included, I do not think we have a firm position on it. We would argue that we already do it and manage it to a carbon neutrality anyway, so it will make no difference to us whether it is in or out.

Mr PAECH: Thank you.

Madam CHAIR: No further questions from the committee?

Thank you very much Mr Manicaros, do you have any closing comments?

Mr MANICAROS: No, but I would like to say again on that singular Ministerial responsibility, I think that whilst I understand that the government is looking at trying to streamline certain components, I think they are actually increasing more red tape and green tape than perhaps need to.

The industry is most concerned about having a singular Minister in the spot who is a decision-maker, who makes the one decision. I think the public needs to have confidence in regard to the process and who that sits with.

Whilst I do not wish to delve into individual personalities, I am fairly confident that there were individuals within the previous Cabinet of government, in the last government prior to 2016, that the public would not have confidence in having singular decision. I think it has got to be looked at through that prism, because you are not just making legislation as a parliament for this government you are making legislation for future governments. I would ask you to look very closely at that when you are making your recommendations, please.

Madam CHAIR: Thank you for your time today, Mr Manicaros.

Mr MANICAROS: You are welcome. Thank you.

The committee suspended.

Minerals Council of Australia
NT Division

Madam CHAIR: Good afternoon everyone. 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 Araluen, Robyn Lambley, the Member for Namatjira, Chansey Paech, the Member for Spillett, Lia Finocchiaro, the Member for Sanderson, Kate Worden and joining us, our parliamentary colleague, the Member for Nelson, Gerry Wood.

I welcome to the table to give evidence to the committee from the Minerals Council of Australia, NT Division, Dr Janice Warren, Manager Policy and Research, Brian Fowler, General Manager Northern Territory and Sustainability, Arafura Resources Ltd and Nicole Conroy, Technical Director Environment and Team Leader Impact Assessment and Permitting, GHD.

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

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and 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 hearing, 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 your name for the record and the capacity in which they appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Dr WARREN: Janice Warren, Manager of Policy and Research, Minerals Council of Australia, Northern Territory Division.

Ms CONROY: Nicole Conroy. I am a member of the Resource Subcommittee for the Minerals Council.

Mr FOWLER: Brian Fowler. I am the Deputy Chair of the Minerals Council NT Division.

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

Dr WARREN: Yes. I will make a detailed opening statement and then Brian will provide some extra clarification being he is a miner and I am not, I am a policy person. Nicky is here to help field questions.

The Minerals Council of Australia Northern Territory Division welcomes the opportunity to address the Social Policy Scrutiny Committee at this public hearing to elaborate on the submissions we made on the 2018 and 2019 versions of the Environment Protection Bill.

The Minerals Council represents small, medium and large firms engaged in the extraction, production and processing of Australia's mineral resources. A couple of representatives of these companies are here with me today to provide further testimony on their substantial concerns with the Bill after I have presented these opening remarks.

These concerns would also be shared by any industry involved with major projects or significant developments that would trigger formal environmental impact assessment. However, because the mining industry is a major contributor to the national and Territory economies and is likely to be instrumental in the Territory's economic recovery, it is important that we have the opportunity to raise these issues here today to assist the committee in providing sound advice to the Legislative Assembly to guide its decision in relation to passing this Bill.

We have five key points we would like the committee to consider. The first is reviews of legislation are welcome because things can always be done better. However, there needs to be a clear understanding of what is not working optimally—including which processes are inefficient or not meeting community, industry, business and government requirements—before commencing such a review.

Second: while the government has developed an entirely new piece of legislation, it does not seem to have paid proper attention to what is actually working well and what is not. The tardy and very truncated processes to develop the regulatory impact statement, or RIS, is evidence of this. Industry confidence is further eroded by the government deviating from its core policy of transparency in not publishing the RIS or at least providing a copy to those who were interviewed to provide data for the review.

Third: there is obviously something wrong with the Territory's environmental regulatory system, particularly for assessment and approval of minerals projects because globally, investors do not currently view the Northern Territory as a secure and stable place to invest. Evidence of this is that there has not been a new major mine opened in the NT for the last 20 years. This is during a period when other states are actively supporting development of mines that will supply the raw materials to ensure Australia can be a part of rapid escalation in renewables deployment and to meet growing global demand. The NT is in danger of missing out completely.

Fourth: more importantly, at a time when the NT is in a deep economic trough and poverty in our Indigenous communities is rife, this new legislation makes it even less likely that investors will choose to come to the Territory and create jobs in the bush for Territorians. As mines reach the end of their lives, there will be even less royalties to help pay the wages of our teachers, nurses, police and to build critical infrastructure.

Just as an aside: the minerals sector pays approximately $350m a year in royalties.

Fifth: the industry's assessment of the new legislation is that it is very likely to drive investment away from the Territory with well-intentioned but totally unnecessary processes that will not deliver any measurable improvement in terms of environmental outcomes that could not be achieved just by implementing the current regulatory processes more efficiently and effectively.

Currently there are a number of proposed new mining developments that are working through the environmental impact assessment process or have just completed Territory and federal requirements and are seeking investment capital. Seven of these have major project status, including five projects in Central Australia with a potential value of $5.7bn in capital expenditure, 3000 jobs during construction and 2000 jobs during operation. However, for this potential to be realised, the environmental regulatory requirements have to be commensurate with risk, based on sound science, consistent, practical and cost-effective.

Regulatory requirements have a profound impact on cost competitiveness and industry's ability to adapt to changing and highly competitive market conditions. The time taken for a mining project to get through environmental assessment and approval has blown out substantially in the last 20 years despite the fact that the environmental performance of our industry has greatly improved over the same period, largely because we recognise the importance of best practice environmental stewardship in gaining and maintaining social licence to operate.

Although there are already a number of statutory time lines for government decisions, these are often not met. This weakness is not in the legislation but in the way the current legislation is being implemented. A one year delay can reduce the net present value of a major mining project by up to 13%. For large greenfield, mineral projects of $3bn to $4bn in value, the loss can be up to $1m a day.

As indicated in our submissions, the industry recognises the importance and value of having an efficient, effective and objective environmental regulatory framework aimed at providing a shared understanding of mutual commitments and responsibilities to underpin ecologically sustainable development.

Our industry is acutely aware of the impact of regulatory uncertainty on the attractiveness of the NT to potential investors. You heard earlier from AMEC that the Territory in 2015 was considered the seventh most attractive place in a global sense to invest, based on 450 completed surveys. However, in the three succeeding years, we have now slipped to 23rd largely because of regulatory uncertainty and regulatory burden.

Importantly, the key source of this uncertainty appears to relate more to inconsistencies in the administration, interpretation and enforcement of existing regulations—this is a criterion straight from the survey—rather than the regulations themselves.

In 2015 when the Territory was sitting in seventh position it was 11th most attractive in the world in relation to implementation and interpretation of regulation. By 2016 the NT had slipped to 15th, in 2017 to 24th and in the most recent survey in 2018 we are now sitting at 34th. This is in relation to the administration and implementation of existing regulation.

Examples of how deficiencies in the implementation of current regulation, primarily the *Environmental Assessment Act*, is undermining industry confidence include the government and NTEPA not adhering to statutory or departmental time lines for decisions—for example, proponents being told not to lodge a notice of intent for several months because there will be no one there to assess it—or delays in the delivery of environmental assessment reports to the Minister at the end of an assessment process.

Another deficiency is in stopping the clock in an environment impact assessment process while a proponent produces and provides additional information to the NTEPA but then restarting the clock at zero every time this is done, instead of restarting the clock at the stage where the assessment was stopped.

Thirdly, there is a high degree of staff turnover that often results in environmental assessment for a major project being delayed when the key project officer role in assessments is passed between different officers to get a project that might take five, six or seven years to get through. A proponent might have to work with two or three different officers.

We believe that none of these deficiencies will be remedied by the new legislation. Instead, industry expects that having to implement such a substantial Bill that is missing critically important detail on how the new Act would operate will exacerbate the already protracted assessment and approvals process. We believe that government should have better identified the problems in implementing the current assessment and approval processes and worked with industry to resolve them.

The NT has and may continue to lose projects to other Australian states because the regulatory processes in those jurisdictions are more efficient and provide a greater level or certainty than those in the NT. For example, Western Australia has over the years moved up through the ranks in these Fraser Institute surveys and maintained its rankings while the NT has slipped. Western Australia is currently sitting at number two, Queensland is at number 13 while the Territory is at number 23.

Investment capital is fluid and it will flow to the path of least resistance. One of the biggest risks to future development in the NT from the new Act is the new environmental approval that will be determined by the environment Minister alone. This essentially gives the environment Minister a veto guided by recommendations from the NTEPA.

The NTEPA is an independent advisory body that may or may not have technical and professional knowledge, understanding or expertise that will be critical for the assessment of significant resource development projects including mining. Seven of the eight board members who advise the environment Minister do not live in the NT. This means they are unlikely to fully appreciate the importance of a potentially very significant project for the NT, especially in the Territory's current struggling economic climate. They are unlikely to have a deep understanding and appreciation of the importance of getting significant and major

projects over the line in the context of the broad range of NT specific opportunities, constraints and strategic planning priorities that are important for growing the Territory economy, jobs and population.

Other Australian jurisdictions require significant or major projects to be considered by all relevant Ministers so that advice to the ultimate decision-maker—typically a coordinator general or planning Minister—is based on the full range of pertinent government priorities like regional, remote and Indigenous development, and the jobs, population growth and investment attraction it seeks, in addition to the environmental advice.

Under the current proposal the soundness of the government's decision could be compromised because it does not require all relevant advice to be considered in the approval. All power rests with the environment Minister who must only make reasonable efforts to obtain the views of any statutory decision-maker they think might be relevant and to consider any written comments from the statutory decision-maker.

Instead the environment Minister's decision is likely to be based almost solely on advice from the NTEPA. If the Minister does not make a decision within the 30 days it is the NTEPA that will be making these critically important decisions.

Members of the Minerals Council have thoroughly examined the Bill and predict that instead of decreasing current protected environmental assessment processes the Act will add weeks or months to the approval process without any additional environmental benefit. Because of this and other deficiencies in the Bill our industry is convinced that the new legislation will not deliver the government's stated objectives or industry's desired improvements to the current system. It is our belief that the new Act will not be able to deliver a better benefit to cost ratio than the current environmental impact and approvals legislation.

We understand that governments are required to complete a robust evidence based regulatory impact statement process specifically to answer this question. Will the proposed new legislation lead to an improved benefit to cost ratio over the existing legislation? The RIS process for this Bill was done very late in the process, January 2019, when drafting was almost complete of the revised Bill.

The government was planning to table the legislation between March and May. In addition to being tardy, the data gathering period was way too short to have allowed gathering of adequate data from industry to make a sound determination. Minerals Council members participated but had only one week to answer a range of questions that realistically would have required weeks or months to respond with relevant considered defensible quantitative data.

Given this rushed process we believe the RIS process could not have obtained adequate information from Territory industry and business to have accurately indicated to Legislative Assembly that the new legislation would meet its intended objectives. Because of this the Minerals Council believes the Bill should not have been tabled back in May, and the Minerals Council has requested of the government to see a copy of the RIS but our request has been denied.

To finish up, our recommendations are as follows:

Given that:

1. the process to develop the environment protection Act was rushed and did not allow for adequate consultation with industry and other stakeholders, including sufficient time for quantitative data to be collected for the RIS

2. that inadequate detail is provided in the Bill (without its associated regulations) to allow a sound assessment by industry, the community and government of its likely benefits and operability

3. the proposed new Ministerial approval would comprise a unilateral veto over all new significant and major development projects and this will be a major disincentive for future investment in the NT

4. fundamental deficiencies in implementing the current assessment and approvals legislation will not be resolved by introducing the Act,

the Minerals Council urges the Committee to advise Legislative Assembly against passing the environmental Bill and instead advise that government work with industry and other stakeholders to improve the existing assessment and approval processes. This is our industry's preferred option, and there is already a precedent demonstrating how improvements to internal processes can greatly improve environmental assessment and approvals.

About this time last year, DPIR revisited mining management plans starting with exploration mining management plans which had become large, unwieldy and not always evidence-based. The aim was to streamline the assessment and approvals process by simplifying the documentation while ensuring critical information to meet legislative requirements would still be collected to allow for an adequately robust assessment based on risks.

DPIR circulated drafts of a much simplified check list of requirements accompanied by a users guide to Minerals Council and other stakeholders. DPIR incorporated industry recommendations that allowed final versions to be released late last year or earlier this year. These materials were road tested by explorers who unanimously gave the forms the thumbs up at the Annual Geoscience Exploration Seminar in Alice Springs in March of this year.

The Minerals Council applauds this approach and recommends that DPIR and DENR continue to re-address issues with current assessment and approvals processes using this consultative and collaborative approach.

If however the government intends on passing the revised environment protection Bill then the committee should urge the government to delay doing so at this time to allow an appropriate amount of time for adequate bona fide consultation with industry and other stakeholders to resolve the serious deficiencies in the current proposed Bill.

Mr FOWLER: Thank you, Janice. I will just add to that. As the Deputy Chair of the Minerals Council but also with my other hat, as having recently gone through the environmental assessment process under the current legislation, I have firsthand experience in the process that is currently in place. I think I am in a reasonable place to look at the new legislation and make some informed judgments on how I think it is going to work.

Some main concerns I have. There is certainly the lack of definition in terms of trying to enable a proponent to understand what level of assessment they are going through at the moment—they are about 10 miles wide and half an inch deep. Just about any project coming before this legislation is going to get slammed with environment assessment. It does not help a proponent at all. I know they keep saying that the detail will come, it will all come in the regulation. I am sorry but we need to see it now so we can make fair and adequate judgment as to how efficient the new process is going to be. There is too much reliance on what will come later.

There is a lack of detail in the Bill, which again relates to the regulation. It is a moving feast, continuously. As recently as last week, we hear now that parts of the *Mining Management Act* are going to go over into it as well. It is, 'trust me we will get it right in the future'.

I am sorry, we are trying to build a business; we are trying to establish a project; the industry is trying to move forward, we need some more certainty and clarity around what we have to jump through in the future. It is really concerning to the industry.

The speed at which this has been done, in my view, has been unrealistic. The government is trying to change multiple pieces of legislation, the *Environmental Assessment Act*, the *Water Act*, the *Mineral Royalty Act*. They are rushing this through, they have not thought about the unintended consequences of what this is going to bring when it comes through.

The Territory is already in a financial situation, it is not in a good place. This Act is taking a relatively straightforward process, with a current Bill that is less than 50 pages, and we are going to supplant that with a new Act which is somewhere in the north of 150 and growing.

We are not going to change the level of resourcing, they might move some deck chairs around but at the end of the day it comes to competence and the capacity of the department to deal with the legislation. They are all going to be new players in a sense with a whole piece of new legislation, learning how it is going to run, and I suspect what it is going to entail ultimately is increased time lines for an approval process.

It is already quite a rigorous and strenuous process to go through. It is not fast, I can assure you. With our project alone, it has been three years in getting it through. I am not criticising that, it has gone through a very rigorous assessment process, but the current process is not broken, it is rigorous. It involves significant engagement with community, NGOs, regulatory departments, but the new process is putting more layers on that.

I suspect ultimately, despite its objective of being more efficient, it is not going to be more efficient it is going to add time to the process. Time is money for a proponent trying to get one of these things up. In terms of a

mining project, our project is quite small, it is a large project in terms of the build cost because of the processing plant, but our environmental approvals are somewhere north of $3m now in terms of the assessment process. That is a big chunk of cash which our shareholders have had to put up and I am fearful that this new legislation is going to make that worse, not streamline the process.

It is slow, but it is well understood. I do not believe this Bill will fix that problem. I think it is going to add to the regulatory burden. We do not understand what the triggers are going to be, they have not defined that yet. There is a whole bunch of stuff that has not been defined, it is all going to be in the regs they tell us—whenever they are going to magically appear down the track, we do not know.

To write a Bill and then rely on regs that are going to come later, is not in my view the way to build confidence in what is going on. As Janice has alluded to, it is already a challenging world in terms of competitiveness and attracting investment and the more uncertainty you put in front of investors about understanding what the process is, the harder it gets.

I can assure you I can speak with firsthand experience, having to try to explain to people why it is taking so long. What about that, how is that going to affect you? They ask the questions consistently.

That is all I need to say. I am happy to take questions from the committee.

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

Mrs FINOCCHIARO: What information would we expect to find in the regulatory impact statement? We have been asking today and no one has seen it. Government obviously has paid a consultant to prepare the document, so it must exist. What type of key information, for the lay person, would you find in that regulatory impact statement?

Dr WARREN: Because one of the main objectives of the new Act is to have better streamlining, a project that takes five years instead of three years to assess is not only expensive for the proponent, it is expensive to government. We know the government is hurting with budgetary stresses at the moment.

The kind of things we would expect to see in a regulatory impact statement, therefore, is how much it is costing for projects of different sizes to go through the assessment process currently and what would be predicted under the new Act. Similarly, what is it costing the government to assess a project now and what would be the government cost? Then, what the RIS should do is gather enough data to be able to answer those questions—so that means it is rigorous enough—and then be able to make a case when they have done the analyses that the new legislation will be streamlined, cheaper and at least as effective or even more effective, with greater environmental benefits. Those are the things we would expect to see in a RIS.

Mr FOWLER: I would also expect it to properly identify if there are adequate resources within the current bureaucracy to deal with it. I suspect that is exactly what will be one of the issues they will face. You can move the deck chairs around, but do the departments that will adMinister the new Bill have the capabilities and capacities to adMinister it effectively to produce the outcomes it is meant to achieve?

Mrs FINOCCHIARO: Thank you. Regarding the Minister having that power of veto, does the Minerals Council have a view of a better model?

Dr WARREN: What we think makes sense and would underpin a sound decision is for all relevant information to be considered in this decision, especially for significant projects.

What happens in other jurisdictions, with the Coordinator General, there will be advice on the environmental basis and on how it feeds into, for example, a state's economic development strategy, infrastructure strategy or Indigenous development and taking all those into consideration, then making a decision whether a project should go ahead.

No one would want a project to go ahead that cannot have its potentially significant environmental impacts adequately mitigated. At the end of an environmental impact assessment process, the question that is answered is, 'Can this project be done in an environmentally sound manner?' We think a better process is that that is considered with other things.

Mrs FINOCCHIARO: So, under this proposed model, it would be that the NTEPA prepares an evaluation and then provides that to the Minister to make the decision?

Dr WARREN: Yes, but before the Minister is allowed to reject and not give approval—as indicated in our submission—we would like those cases to be referred to the Administrator, which we believe then, given legal advice, that would trigger a Cabinet process and allow those other opinions, experience and knowledge to feed into a sound decision on those cases.

Mrs FINOCCHIARO: Is that part of—some of the submitters raised concerns about the picking and choosing of the wording in the Rio declaration about social and economic, and cost-effective …

Dr WARREN: They took that out.

Mr FOWLER: They cherry-picked the bits they liked and rejected the bits they do not like, like they have a better view than the Rio convention. I am sorry, but that is pretty arrogant, quite frankly.

Dr WARREN: What undermines our trust is in all three cases—and this identified in our submission—it has to do with excising words that deal with cost-effectiveness, the right to develop commercial and economic considerations. Why whoever drafted this Bill would have gone to the trouble to make sure those terms are excised does not inspire confidence.

Mr FOWLER: The big picture is a project is not just about environment. Yes, that is an aspect that has to be considered. Regional development, Aboriginal development on their land, they have a right to have a say on that. What does a project build and bring in terms of infrastructure. There is a whole bunch of things. Not one Minister is going to be across that level of detail. That is something that the government holistically needs to make a call on—in my view—not a person.

Mrs FINOCCHIARO: This is hypothetical which is probably out of the bounds but if the NTEPA are the organisation who are tasked with making recommendations to the Minister, would it be within the expertise of the NTEPA to provide advice to the Minister on the social and economic type matters. If those words were to put back in, the advice would still be coming from the NTEPA.

Dr WARREN: One would assume—and I used to be in the EPA and I used to be in the assessment section and I was involved in the assessment of the ConocoPhillips project—where we do not have expertise, the government brings it in.

Ms CONROY: With the environmental assessment process is a process that considers social and economic impacts as well as ecological or environmental impacts so it should be a process that considers the full range of impacts. The EPA should consider economic and social impacts with the same intensity as they do environmental impacts.

Mrs FINOCCHIARO: But they will not be able to because those words are excluded from the Bill.

Ms CONROY: I do not think it is a matter that they will not be able to, it is more a matter of the balance being tipped.

Mrs FINOCCHIARO: It is not having that prominence.

Dr WARREN: The wording as I was saying is the environment Minister only has to take reasonable efforts to ask and consider something that is written. What we are proposing and what is in our submission is that before a Minister decides not to grant an approval, that those go to the fuller bench, including economic, social, cultural and the other aspects.

Mr PAECH: And when you say ‘fuller bench’ you are referring to…

Dr WARREN: Cabinet.

Mrs WORDEN: Just on that, I know my colleague is asking the question. On one side there are issues around timeliness which are obviously quite valid from an industry perspective but then you are proposing that it goes to Cabinet. Is that not going to add additional time frames? Do you not think that what you are proposing is going to take more time in itself?

Ms CONROY: The recommendation is that if a project is likely to be rejected, that it would go to Cabinet. It would be very unusual, I imagine, that a project would get that far into the environmental assessment process. If it is economically, environmentally and socially not a good project, it usually would not get that far. A project

that would get that far through the environmental assessment process and then, for whatever reason, the Minister made a decision that it should not be approved would then go to Cabinet. It would be rare.

Dr WARREN: It is possible that we could have a Minister who is just opposed to mining. It has happened. There are no checks and balances in the current system that allow appropriate checks and balances with that situation. If the Minister then was disinclined to give an approval and it had to go to Cabinet that would give us those checks and balances.

Mrs WORDEN: The issue here is with an environment Minister saying no but currently a resource Minister could say no and that process is not in place.

Mr FOWLER: That is correct.

Mrs WORDEN: So what difference does it make?

Mr FOWLER: The current process does however rely on a range of checks and balances. Ultimate power does not lie with the current minerals Minister. The assessment process brings everything together. The Minister does not ultimately make a decision. There is a consultation process. This removes some of that consultation process.

All power vests with the environment Minister. If the board comes up with recommendations and the Minister does not like a recommendations, you have to go back to the board to say why he does not like the recommendations.

The way I read it is that they are still bound by the EPA board's recommendations. I do not know how it is all going to work. It is not clear.

Mrs WORDEN: It does say that the Minister can reject those.

Mr FOWLER: Yes, but they have to take advice though.

Mrs WORDEN: Well they currently have to take advice.

Mr FOWLER: Yes, but do they then go back to the board for new advice? I do not know. It is not clear. I am unsure. Maybe it is in the regs.

Mrs WORDEN: You could not help yourself.

Mrs FINOCCHIARO: It does provide a level of uncertainty which is comical in a sense because we are trying to understand how something operates but inherently you cannot.

Mrs WORDEN: It is definitely a question we can ask. From my reading you are moving from one Minister to the other but the same principle applies. The mining Minister can currently say no.

Mrs FINOCCHIARO: I guess the difference is that the mining Minister is the mining Minister.

Mrs WORDEN: But can still currently say no.

Mrs FINOCCHIARO: I want to ask about referral triggers. This came up earlier today. Could you—for the lay persons, we have lots of people who tune in and even for ourselves as we are not mining experts. When we talk about triggers, at what type of activity you are undertaking will trigger this process? Is that where the uncertainty is?

Dr WARREN: Yes.

Ms CONROY: That is our understanding, yes.

Dr WARREN: So it could be that all mining projects will have to be formally assessed. All agricultural have to be formally assessed …

Mrs FINOCCHIARO: Because there is no size, cost or footprint.

Ms CONROY: At the moment the process is unclear however, you develop the notice of intent and through this process an environmental assessment specialist would be able to give the proponent and indication of whether this project is likely to be referred. It is based on the level of potential risk.

Dr WARREN: Or complexity.

Mrs FINOCCHIARO: And that is founded somewhere in the legislation or the regs at the moment?

Mr CONROY: No it is not.

Mr FOWLER: It is part of the process.

Dr WARREN: It is also current guidelines …

Ms CONROY: It is looking at environmental objectives and whether they are going to be met or is there a potential for them to be an impact on environmental values. It is a judgement call.

Dr WARREN: For example, a project that has only one or two potentially significant environmental impacts that are readily managed. I would like to say that we know enough about aquaculture to know how to manage waste water, feed and potential exotic diseases. If there was an aquaculture project sited in an appropriate area, that one may not have to be formally assessed at the environmental impact statement level. It could be assessed on the referral information and some supplemental information.

Mrs FINOCCHIARO: Because it is a relatively routine …

Dr WARREN: So we are talking about triggers.

Mrs FINOCCHIARO: … understood risk.

Mr FOWLER: The problem is that environmental assessment is based on risk and impact. In our case we did a comprehensive risk process at the start and identified those issues that we believed may have an impact. When you get to the assessment process you end up with a notice of intent which tells you to study everything in-depth, irrespective of risk. Risk seems to start at the front end and then flies out the window because you study everything and they will focus back onto one or two. Quite often they try to catch everything.

The bulk of things that happen in most operations will come down to one or two aspects of a project, which in my belief, might present a significant risk. The bulk of it is management 101 and I am not being flippant. It is basic good environmental management that will manage what goes on at a mine site or a major project. There are always one or two things that require more focus. So, you get that focus, do the studies. You do all of that.

But we have a situation at the moment where everything is studied and, as I said, irrespective of what the risk grading is, you get down to micromanagement on just about every damned thing, unfortunately.

Ms CONROY: We have a current process. The concern is that under the new *Environment Protection Act* it is unknown. What are the triggers? What are the environment objectives that we will be making judgments against? The current system is not great.

Mrs FINOCCHIARO: So, it needs work, whether this is the answer is another story.

Ms CONROY: It needs work but we do not have enough information now to say whether the new model is better.

Mr FOWLER: Better or worse, yes.

Ms CONROY: From a proponent's perspective, it is cost. Those referral triggers and environment objectives provide proponents with some guidance about what it might cost them to do the environmental process, so that they can go out to their investors and say, 'We will need $2m' or whatever it might be.

Mrs FINOCCHIARO: And this comes back to certainty about that decision-making. So, if people cannot understand where their project roughly fits and then, roughly what the time frame and the cost of that process

will be—you mentioned water finding the path of least resistance—there is the risk then that proponents go elsewhere?

Dr WARREN: It has happened.

Mr FOWLER: Yes, there are examples where proponents have said, 'It is too damn hard, I will go somewhere else.' We cannot quote the person's name, but I can tell you we have lost a project in the last two years for that exact reason—it was too damn hard here and the project is now being built elsewhere.

Dr WARREN: There were two almost identical projects. The NT one started first and took seven years. The one that went to this other jurisdiction took five years. It started later, finished sooner and was about one-tenth the cost to do the environmental assessment in the NT.

Initially, the NT was supposed to be the flagship project, but the flagship status went to the project in the other jurisdiction and I do not know what the status of the NT project is at the moment.

Mr FOWLER: Backburners.

Mrs LAMBLEY: In your opening statement, Mr Fowler or Dr Warren, one of you said that there has been no new mines in the Northern Territory for 20 years. How much of that would you attribute to the environmental assessments than the obstacles?

Mr FOWLER: Oh, God!

Mrs LAMBLEY: This is a tricky question.

Dr WARREN: Yes. Look at all the evidence. Look at what has happened to—well, statistics I have just quoted is all within the last 20—that is in the last five years what has happened to our status.

Mr FOWLER: It is really difficult. I will have to do some work on that to come back with a proper answer. It is all just part of the issue, though. The level of uncertainty creates investment uncertainty.

Mrs LAMBLEY: With Arafura Resources, you said it has cost $3m over the last 10 years …

Mr FOWLER: To date, yes.

Mrs LAMBLEY: Is that something you estimated?

Mr FOWLER: No, it is double what we estimated.

Mrs LAMBLEY: Are you able to describe what some of the problems have been—why that has escalated to $3m in three years? Or is that confidential?

Mr FOWLER: Part of it is the very conservative approach. I firmly believe that the issue is that they do not really understand what risk and impact management is about, so they take the precautionary approach to everything—absolutely everything. I could provide evidence today.

We have just gone through a process where we have put in another document because we have changed the project, supposedly. We have two mining leases on the project and have shifted stuff from one end to another. The perception is the risk has changed materially in one area now—it comes down to. But when I presented the same information to the Commonwealth Government, it said, 'It is all okay. We do not want to do any further level of assessment.'

The EPA has now come back to me with, 'You need to provide more information on how you will manage this aspect.' In fact, I do not know how we will manage it, because there is no scientific basis on which they have asked me the question. I have to try to figure out what impact dust might have on a habitat of a wallaby. There is no science behind that at all. In fact, wallabies are not a receptor for dust. People are a receptor, so I do not quite know how we are going to deal with that.

That is just an example of the sort of stuff that gets thrown back at a proponent and we are obliged to answer it.

Mr PAECH: Do you think some of that has come about because throughout the history of the Northern Territory's large scale projects there has been a number of environmental mishaps of natural water streams and particular resources leaching about.

We acknowledge that the Territory has not had the best track record when it comes to containing these natural situations. I acknowledge your point about it being very comprehensive and sometimes industry might find it difficult but the principle of this legislation is an attempt to try to provide that certainty.

You have made a number of recommendations—following on from that, there is a period there of which it says the transition period could be up to three years. There are other people who have appeared before us this morning who have said 12 months would be an appropriate transition period. What is your view on that transition period?

Dr WARREN: Twelve months is not adequate for most mining projects because of lead times, how long it takes by the time you have done your base line studies. The information to move the ball forward takes a long time and a lot of money, and 12 months is like almost a batting of the eye in that context.

For transition, I think our recommendation was a project that has got to a stage where it has approved terms of reference that should be allowed to proceed under its current legislation. That would be fair and reasonable by the time it gets to that stage.

Mrs WORDEN: If the legislative change actually improves that outcome for you, sure it would be in your best interest to transition to the new legislation for those projects.

Dr WARREN: If we had a high degree of confidence that the new legislation would do that I would agree with you.

Mrs WORDEN: If at the end of the day it works, it is a better outcome and there might be some fast tracking, some of the issues that you are raising may not actually have to occur depending on the risk level—we have established that—surely there would be benefit in some transitioning even if they are at the stage that you are talking about if they are of lower risk.

Dr WARREN: There is not enough information in the Bill to give us confidence. Things that are critically important like the triggers. The triggers are going to determine whether a project is formally assessed or not. That is really important to have confidence in and that for industry to have confidence that is going to be risk based and evidence based.

Mrs WORDEN: We can certainly ask the department that later.

Dr WARREN: There are so many things that have been deferred to regulations—they would all be in the regulations. It is not …

Mr PAECH: Your main concern is the lack of information in the Bill.

Dr WARREN: Currently. Yes. Also some of the approaches, as I said, I wanted to highlight that example of making improvements to internal processes. What we would like to see now—if the scrutiny committee goes ahead and advises Legislative Assembly not to pass the Bill but to send it back to be worked on again, we would like to see it broken down in to workable bits and work with government to say this is what we are trying to achieve through these provisions—do you like them, do you not like them, are there other ways of doing it?

We talk about—here is an agreed way forward—yep, we like that, let us work on the next bit. Doing it that way we are more likely to get the legislation to the stage where Kate is referring that we have confidence in it.

Mrs WORDEN: Janice, again you will be stuck in the current. A lot of the complaints are around where you are now and the lack of certainty or the onerous position that the current situation gives you—you send it back again and more work occurs and it goes on and on. You guys are going to be stuck in that …

Dr WARREN: We would not like the Act to be passed at this time and let us just fix the problems now.

Mr FOWLER: The problem is the new stuff does not change the process. I am sorry—for all of the 150 pages of words we have a regurgitated old system with some new bits, so we have rebadged it, we have added a

couple of steps here and there and that is going to be the great saviour and it is going to cut all this time out—I am sorry—it is not going to change it. You still have to get the people to be able to work in it efficiently. It is not an efficient process. Accept that it is going to take time, but get it right. I just do not think they have got it right, quite frankly.

Madam CHAIR: As a part of the consultation, did government come out to the industry, or to you in particular, and tell you that the new legislation, should it be passed, was actually going to expedite the process and make it a lot easier and quicker?

Mr FOWLER: That was what we were told, yes, absolutely.

DR WARREN: I would say that we had senior members of the reform team from DENR come over every time we asked them to address our council or the sub-committees. We had lots of discussions, but then there were some surprises in the Bill.

There was a lot of discussion, but still what we saw in the end, I guess was not what we expected as far as something that was patently an improvement over what we had. Something that appropriately addressed where this current system is falling down.

Mr WOOD: Obviously if a project takes a long time, it is costs money. There are two aspects to that. The person or company coming up with a proposal has fully prepared a proposal which does not need to go back or questions need to be asked. That is one aspect. I have on my computer a proposed environmental impact assessment process from the Bill and I came up with a total of 250 days. When something is submitted, referrals are given to the NTEPA and decision on acceptance/refusal within 15 days. That is what it says.

Theoretically, you should have everything done in 250 days. If I go through, there are 60 days, 40 days et cetera. If everything is prepared at the beginning, all the information is up the front, do you think it is possible for the department to stick to its time lines or what will happen in practise that will defer it to say twice that length?

DR WARREN: Based on current performance?

Mr WOOD: This is what I believe is taken out of the new Act, it has got time lines. Those time lines from beginning to end should take 250 days.

Ms CONROY: Could I comment? If the government sticks to the time lines, then I agree they will be very efficient in responding.

In the current process there are delays because there are no time lines and the new Act does address that. In the current process there are also delays because the information provided to the proponent is not clear and consistent. It is not a straight forward process to develop an environmental assessment.

I do not know how the new Act could make that process better, but the significant amount of the delay is about the proponent having to read the minds of NTG about what are the key issues that NT Government is going to be most concerned with and are going to generate the most questions and comments in the response of the government to the project documents the proponent puts forward.

We need a clearer more consistent process and we need better communication between NTG and the proponent so that the proponent is not going backwards and forwards with those documents three, four and five times before there is a satisfactory environmental assessment.

Mr WOOD: What I am asking, land clearing which is simpler for me.

Ms CONROY: Yes, land clearing is okay.

Mr WOOD: My understanding from land clearing—which also comes under the *Planning Act* and the *Pastoral Land Act*—is that you are required, before you clear the land, to look at (inaudible) type of soil, wetlands, habitat et cetera. You should know what the department will want from you when you put your application in. Is that the same with mining? If you fulfil all those requirements, what then stops it at that point from getting through into the system of 250 days?

Ms CONROY: It is not always possible because the proponent wants to spend only what they need to. You can do 1:100 000 or 1:25 000 scale assessment of slope and soil. There are costs associated with those two

scales of ecological assessment. What is not always clear—that is just one example and there is also groundwater dependent ecosystems and a range of 10, 15 or 20 listed threatened species that may possibly occur in that region.

The proponent could go out and do all of those studies and spend a great deal of money to make sure that everything that the government needs in order to make an assessment is there, or the proponent could go to the government and say which studies do I need to do. It is not a clear conversation between the government and the proponent about what is needed to get this project across the line.

Mr WOOD: Is there flexibility in this new Act? I have not been able to take it all in. Even though you might have a set of clear guidelines at the beginning, is there enough flexibility to go to the department or the EPA and say 'this is where we intend to do our work, mining or whatever, we think these issues are relatively insignificant in relation to damage to the environment and we think these ones will cause significant damage under the way the Act is, which ones do you want us to concentrate our effort on?'

Dr WARREN: I will make a point here, you are talking about these internal processes, not the legislation. That should be possible and what I think used to be the case is that the proponents were always encouraged to come early and engage with the EPA and DENR early so they could start having the conversation—'We are thinking of having a mine, these are the specs and this is what we are going to do'—and it is an iterate thing. 'Go and do some baseline work, then come back and we will have a chat.' You would have an officer assigned to the project and say, 'Do not worry about these things, we have eliminated those, so just focus on these'.

That is what underpins an effective and efficient process. That could occur under either the existing or the new legislation but in order to make it work it is this internal process that needs to be tightened up, and that is not going to be fixed by the new legislation.

Mr WOOD: Let us not forget the public involvement in a big project. There needs to be a time line for the public. I am not sure I need to go through that again. I presume when there is an environment impact statement, the time line in that should include the public's chance to have a view on that as well.

Dr WARREN: What I was just describing is almost getting to the first stage of when the terms of reference are released as there should be a fair amount of interaction to make sure that those are spot on and based on risk. That is what goes public. What happens behind the scenes of each of these opportunities for the public to engage with and comment on is proponents with industry, business and government working together to make it an efficient process internally.

Mrs LAMBLEY: Is the Northern Territory Government any better or worse than other jurisdictions in Australia when it comes to this internal problem?

Mr CONROY: I suspect that we are less consistent because we have greater turnover.

Mrs LAMBLEY: Like you described in your opening statement—going on holidays for two months, closing shop, turnover of staff.

Mr FOWLER: It all adds to the cost because you have to bring people up to speed again. That costs time and money.

Mrs LAMBLEY: Would you say that government does not really care about the cost of mining?

Mr FOWLER: I do not think there is a proper understanding of what it costs a proponent to sit there and wait, spinning their wheels, waiting for a person to come back. In Arafura's case our sitting around time is somewhere between $350 000 and $400 000 a month. Just spin your wheels guys. We are doing other work admittedly but that is what the delays cost.

Mrs WORDEN: Can you explain that a little bit more? Obviously none of us are in the industry. That interests me …

Mr FOWLER: Every month that the project could be going forward, that is what it is costing our organisation to stand still. It is what we call our burn rate.

If you can get all your approvals lined up, everything is in place, arguably you can press the button and start. For every month you are delayed, it is another $300 000 or $400 000 it is costing you …

Mrs WORDEN: Because you have experts waiting, those sorts of things? You bring people on for a project and they are not able to …

Mr FOWLER: They are not doing the work you would like. We are holding back constantly and that costs you money.

Mrs LAMBLEY: Can I add, the economic future and prosperity of Central Australia depends on mines like this one at Aileron which has the ability to turnaround the economy of Central Australia in a way we have not seen for decades. That is my own personal opinion. In clarifying, really this legislation is not going to improve the way the department functions and makes decisions and enables mining to occur in the Northern Territory.

Mr FOWLER: It is my belief that it is not just going to be fixed by a piece of legislation. You have to change the behaviour and the culture of an organisation. They have to want to work efficiently.

There seems to be a reluctance—and I can understand it from outsiders looking in—if a proponent goes forward and sits down with the EPA and has a frank and open discussion that some would perceive that as they are in bed with that mining company, for instance. That is not what we are trying to do. We are trying to get an efficient process and a good outcome. There is a resistance or reluctance to engage fully with proponents to try to resolve some of the stuff that Nicky is talking about.

This cross-departmental interaction that has to happen is quite inefficient frankly. Even within departments, there are significant inefficiencies. I could have brought a spreadsheet forward that I interrogated when I got my responses to the EIS. I know it pretty intimately but I do not have all the detail in front of me. When we lodged our document, the main EIS was 13.3 kilograms—3100 pages in that document—and in the supplementary document that came later was another 2.8 kilograms and another 1000 pages. Nicky knows it well.

We got 604 comments back—that is okay—but 338 came from the NT regulators and 191 came from one regulator and that was the mines department and they absolutely knew everything about every aspect of the project. Unfortunately they are not expert in every aspect of the project but what we then had to do was respond to every single comment that we got back, even when the two comments were opposed to each other from the same regulator. There is no coordination within departments and across departments to go, ‘Hang on, there is something not quite right here’.

We answered every single one because we have to. They are the kind of efficiencies that can save a proponent time and money because responding to 604 comments took us some months I can assure you. There is no communication within the process which is disappointing. There is something you can fix straight away.

Dr WARREN: You said you had 25 sets of comments; 21 were from government departments?

Mr FOWLER: No …

Madam CHAIR: I am just going to have to close it off. I am wary of the time and we are chewing into the next submitter. I thank you very much for your time this afternoon and for sharing a lot of information. It was very helpful.

The committee suspended.

Ward Keller

Madam CHAIR: Welcome. My name is Ngaree Ah Kit. I am the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Environment Protection Bill 2019.

I acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatjira, Chansey Paech; the Member for Spillett, Lia Finocchiaro; the Member for Sanderson, Kate Worden; and we are also joined by our parliamentary colleague, the Member for Nelson, Gerry Wood.

I welcome to the table to give evidence to the committee from Ward Keller, Kevin Stephens, Partner and Bradly Torgan, Special Counsel.

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

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and 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 hearing, 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 appear before inviting you to make a brief opening statement before proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Mr STEPHENS: Kevin Stephens, Partner at Ward Keller.

Mr TORGAN: Bradly Torgan, Special Counsel to Ward Keller.

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

Mr STEPHENS: Yes, thank you. Good afternoon, Chair Ah Kit and members of the Social Policy Scrutiny Committee. Thank you very much for the opportunity to appear before you today.

By way of introduction, as I said, my name is Kevin Stephens and I am a partner at Ward Keller, which is a local law firm in Darwin. I am appearing with Bradly Torgan, Special Counsel for the firm. Ward Keller is the largest and oldest law firm in the Territory, with over 50 employees and four offices spread throughout the Territory, including Alice Springs. The firm traces its history back over 100 years.

I have been involved with environmental impact assessments and approval processes for over 20 years. In fact, I have acted for the companies—or acted in relation to 11 of the last 16 completed environmental assessments. I act for the company that submitted the most recent environmental assessment and I act for two companies that are about to issue an environmental impact statement, having received terms of reference.

I was born and schooled in the Territory and have been with my firm for over 26 years. Mr Torgan has come to the Territory and Ward Keller with over 20 years of direct experience in environmental impact assessment law, including litigation both interstate and internationally—from California, no less. It is because of our experience in this field and our concerns about the negative impact this legislation will have on the Territory and its economy without commensurate benefit that we are appearing here today, and the fact that we made significant written submissions both to the exposure draft of the legislation and on the Bill before us.

I have to say and need to emphasise these submissions and my comments are solely those of Ward Keller. We are not speaking on behalf of any of my clients. They need to be taken as read as of a large local enterprise, fully Territory based.

The Legislative Assembly should enact laws for the benefit of Territorians. This legislation will not work for the benefit of Territorians. It promotes extensive detailed regulatory provisions over action. It does not allow for a proper weighing of the benefits of economic development against any impact on the environment. It involves duplicate regulation and increasing regulatory burden turning, at minimum, one approval into two.

It centralises development power in the Minister for Environment and Natural Resources, giving that Minister a veto right over all major development in the Territory. It reduces the power of the NT Minister, at the expense of the NTEPA—an NTEPA which is Territorian in name only, as seven out of the eight members do not live in the Territory.

This Bill, if passed, will increase the time taken to undertake environmental assessments and it will increase the cost of environmental assessments. As an aside, I tell my clients, my experience is for all those projects, you cannot get away with an environmental assessment for less than 18 months and less than $1m already. It will stifle innovation and it will reduce growth in the Territory. It has been introduced in a manner that is not sufficiently honest and transparent. I propose to quickly address each of those issues for you.

What is amazing is that honestly none of this is necessary. Where are the environmental disasters or things so wrong in the existing system that this is required? I will outline each of those problems in more detail to you.

The laws in place, in particular the *Environmental Assessment Act* and the Environmental Assessment Administrative Procedures as well as the environment provisions contained in the *Waste Management and Pollution Control Act, Mining Management Act* and the *Petroleum Act*, cover the same field and allow for the proper consideration of regulation of the environment.

What was required was proper administrative action under the existing system. What you needed was much more targeted assessments with the proper use and distinction between environmental impact statements at one level and public environmental reports at another level. You needed much higher, you still need much higher quality assessments reports. You need recommendations for specific actions to protect the environment.

Brian referred to X number of kilos of paperwork with how many thousands of pages. It is beyond comprehension for any single person to get across that, to fully understand and make meaningful action about that. The first requirement out of every assessment, you have to comply with everything that has been said as a result of this process. That is ridiculous.

There is no specificity, there is no detail, there is nothing targeted in relation to that. For a proponent, it has been years of research, multiple documents, multiple feedback and you are supposed to comply with all commitments made at any time throughout that process. I think that is unreasonable.

The department in their assessment reports have to respect the role of the primary regulator and not now substituting the NTEPA or putting the NTEPA over the top, pursuant to the recommendations of approvals.

Last, but not least, they have got to avoid the overuse and over-reliance on independent experts, which is now creeping into all assessment reports. We need to have government being the experts, government regulating, government taking ownership of things, not always casting things off to independent experts.

If government really feels that administrative action is not enough and it must legislate somewhere, then what it should be doing is amending its environmental laws to adopt a stand-alone mitigation plan formulated by the NTEPA, with the approval of the Environment Minister, but critically subject to the approval by the responsible Minister, whether it be the Ministers for Mining, Lands, Planning et cetera. All that is set out in much detail in section 7 of our report to the committee.

I want to emphasise the way the current environmental regulatory regime works at the moment. Broadly speaking, there are two parts to it. The first part is the environmental assessment part, if anyone is going to take an action that may have a significant effect on the environment—we might come back to that in a moment in respect to triggers—if anyone is going to do an action that may have a significant effect on the environment, it is the responsibility of any Minister who has to give an approval to make sure that that goes through an environmental process. I will talk about that environmental process just a little in a moment.

Separately, in terms of licensing of your actions and then carrying out actions and harming the environment in a way that is not authorised, you actually have a suite of legislation with environmental offence provisions and licensing provisions. That includes the *Waste Management and Pollution Control Act* which in many other jurisdictions is an environmental protection Act. It just has a different name here. Then, you have industry-specific regulation such as the *Mining Management Act, the Petroleum Act, the Pastoral Land Act, Marine Act,* and *Water Act* all of which have their own environmental offences.

Moving back to the *Environmental Assessment Act* and the requirement that the way that Act works, it is directed at government. It says before any Minister is going to grant any approval or licence or authority, and the effect of that action might be to have a significant effect on the environment, the Minister or the proponent goes and tells the NTEPA by serving a notice of intent, the NTEPA then determines if it has a significant enough effect on the environment that it warrants formal assessment and reporting.

If they decide yes, at the moment, in the six pages of legislation that governs this, there are three options available: a public inquiry which we have almost never had except for fracking but it was done outside this space; an environmental impact statement; or a public environmental report. They are supposed to represent cascading levels of time and money you would spend commensurate with the risk of the project.

Unfortunately, we almost never see PERs anymore. They have gone out the window. There are a couple. I think there is one in the pipeline out to the mine out in the Tanami—Callie—but PERs are very rarely used anymore. Everything gets bulked up and run through an EIS. Once you do the process, which involves public engagement and then having to answer a heap of questions and submit a supplemental environmental report to deal with any alleged deficiencies. This results in an assessment report, prepared by the NTEPA, commented on by the environment Minister, and handed over to every Minister that is going to issue a regulatory approval to make sure that they take account of the environmental impacts of the actions they are thinking about authorising.

It is that Minister that has the crucial task of weighing economic benefits, the social and infrastructure development of the Territory with the effects on the environment. Make no mistake, no development of the Territory can occur without some impact on the environment. All development involves impacting the environment and the greater the development, the greater the degree of impact.

The advantage of the existing model is two-fold. All Ministers making decisions that might affect the environment have the benefit of an environmental assessment report and recommendations that are targeted to looking out for the environment, protecting the environment and concerned about the environment and how to mitigate effects. It is quite properly the NTEPA and the Minister can just be focused and concentrated on the environment. Elsewhere is the other issue of weighing environmental impact with the benefits to society.

The second thing is, the Minister with the primary responsibility and expertise in relation to the matter, will determine whether the matter should proceed. I contrast that with the alternative proposal which is embodied in the current Bill. That is to have separate licensing, bonding, auditing, enforcement, and transfer approvals.

What this means is that a unified approval now becomes two approvals with two separate licences and conditions, the environment Minister boxed in by the NTEPA—and I will explain why I say that—has a veto power of all major projects and given the broad definition of environment and that major projects continually affect the environment, there will almost certainly be large degrees of regulatory overlap and departmental duplication in regulation.

The environment Minister, guided by the NTEPA, must acquire skills not to regulate all projects, not just to worry about the environment.

What is missing in this Bill is the right to develop, the primacy of the responsible Minister, simplicity, brevity and balance. It is best fixed by not passing it.

The first thing about this Bill and why I say it promotes expensive detailed regulatory provisions over action is that the existing *Environmental Assessment Act* is 13 sections long and six pages. It is this here. Under this, we have just approved the most significant project tin the Territory's history—INPEX—and all other projects. Ever since 1982, every project developed in the Territory has been successfully developed under this legislation that is six pages long and 13 sections.

We will replace that with 293 sections and 137 pages, and I have not counted the 49 sections dealing with transitional provisions and other legislation to do pretty much exactly the same things that are already done there, with no appreciable difference or benefits, other than the crucial ones which I am complaining about and which I think will harm the Territory.

We do not have the draft regulations, but I can tell you of the 16 sections that at the moment comprise the Environmental Assessment Administrative Procedures that help make everything work, we do not have a draft regulations anymore. But when there were originally draft regulations put out to accompany the draft consultation Bill, those 13 pages and 16 sections became 213 sections.

I defy anyone to truly and honestly say that will not add challenges, cost, time or avenues for appeal, given the enormous level of detail and extra words to do the same thing.

The critical issue we have about this legislation is that it does not allow for the proper weighing of the benefits of economic development against any impact on the environment. I want to take you through, briefly, why this occurs.

Section 4 of the Bill defines the Minister as a decision-maker. Section 17(2) then provides that a decision-maker—which now includes the Minister—must comply with the principles of ecologically sustainable development. The principles of ecologically sustainable development are set out in Division 1 of Part 2 of the

Bill. But as has already been stated and we alluded to, on the first draft of consultation—and there have been some amendments made by they do not fix the issue—those principles that are set out do not faithfully reflect the principles as written out in the Rio Declaration or other legislation.

Of itself, I do not have a problem with that. But when the issue is that everything that is being stripped out is references to—in the Rio Declaration—a right to develop, talking about balance and cost-effectiveness that is a cause for concern. It is not a cause for concern to me if the job of the environmental regulator is to make recommendations and someone else performs the balance. But it sure is of concern when the job of the person is to really only consider the environment, not do the balancing and then has a veto power. That is the heart of my problem.

As an aside, there are inconsistencies with the presentation of ecologically sustainable development as a concept through all of the Territory legislation. It is defined in the *Northern Territory Environment Protection Authority Act* in a different way, which is different again from the principles as they appear in the *Waste Management and Pollution Control Act*. Even after that, it is different again from the draft general guidance for proponents preparing an environmental impact statement, which the DENR has just released. I do not think that should be the case.

There is no reference in the Bill to balancing the effect of the environment of a project with the benefits that project brings to the Territory and the people of the Territory. This is also seen by section 3 of the Bill, which is the objects. When you read those objects it is only about the protection of the environment. There is nothing in those objects about the responsible development of the Territory and the economy. Contrast that with the *Mining Management Act*, which is all about mining management and mining activities or the *Petroleum Act*, each of which specifically refer to protecting the environment and in managing environmental risk.

It is good for the goose but it is not good for the gander, when we are all supposed to be cutting red tape there is going to be another approval that can veto a project.

The response of the government to our original complaints about this were to amend some drafting. They introduced a new section 70(b) which requires the Environment Minister to make reasonable efforts to obtain the views of a statutory decision-maker, and then the introduction of a revised section 73, which is different, which amended section 87 in the consultation draft by adding in the Minister to include any other matters that the Minister considers relevant. It is not good enough.

It does not reflect the fundamental importance of the weighting that must occur between the effect on the environment and the positive effects, if any, as can be demonstrated through the EIS process of the benefits of the project to the whole society, to the Territory.

There is a significant legal risk that what is being done by the government in response to what we have already said is insufficient to introduce this proper weighting in that is absolutely required.

It is not all up to the government. Once it is a law it is a law that binds all people including the government, and then people are free to challenge projects which is their absolute right. People that are absolutely committed against mining or against carbon or against this or at odds with everyone else in the economy that might want a bit of balance now have the opportunity to drive home at minimum, extraordinarily delay, and potentially in my view, quite correctly say to the Minister—you are acting beyond power, you are taking into consideration, look at your Act, it only has regard to the environment.

Contrast ecologically sustainable development here with everywhere else. That has to mean something. That is the way these arguments go in court. That is absolutely compelling in my view. I see this as a fundamental flaw in what we have in front of us.

I say that under the existing system the environmental recommendations have to be prepared by the NTEPA, considered by the Environment Minister but then handed over as recommendations to the responsible Minister to make the final decision and do the balancing. Separate from the Minerals Council, I do not support an additional process, send it up to Cabinet. The truth is that Minister will not make a decision without taking it to Cabinet and they have the ability to do so. But this does not mean they are not hamstrung by the detail and provisions of the legislation, which bind Ministers as well. They do not become a regulatory-free zone.

I have already said it involves duplicate regulation and increase in statutory burden. It takes one approval and turns it in to two. This is in many other things I read from the government—we are going to cut red tape, we are going to streamline approvals, we are going to reduce regulatory burden—but now I have to take one approval and get two and get the second one out of a 230-section Act.

If the Ministers says, okay, my job now if I want to have full regard to the mining and the benefits and all the rest of it—the Environment Minister has to step beyond just being concerned with the environment and the expertise all of which is entirely appropriate and should be done, and start acquiring expertise in every other industry that the Environment Minister it is going to consider, rather than leaving that expertise to the responsible Minister. That is the appropriate way and the most efficient way to proceed and likely to get the best outcome.

Madam CHAIR: Mr Stephens, do you have much more on your opening statement. I am wary of time and wanted to open it up to the committee for questions.

Mr STEPHENS: I have a bit but it is up to you.

Madam CHAIR: Perhaps we will ask …

Mrs FINOCCHIARO: I would prefer to hear it.

Madam CHAIR: Not a problem. Continue.

Mrs FINOCCHIARO: Do not truncate it; we will ask fewer questions.

Mr STEPHENS: Yes. I have prepared this on a particular order to lay out something in a particular way.

To do the job properly, and we have already seen it. After the first round of draft consultations in relation to the Bill—what was the response of the department in their statements and things—we are going to need much more resources.

The previous people were talking about being worried about the amount of resources at DENR. I have already heard DENR say after the first round 'you are right, there is a lot more in this and if we are going to do some of this sort of stuff, we will have to acquire a heap of new skills and resources'. We already have a public service that is an issue in regard to its size and performance. Adding more duplication to another department to do what is already done with true experts over here—whether it be pastoral, land clearing, mining, petroleum, pipelines, geothermal—that is crazy.

It centralizes power in the Minister for the Environment. I was told at a meeting with one of the Minister's advisers that there is no veto. That is patently untrue. Section 92 of the Bill headed 'environmental approval to prevail over other statutory authorisations'. Sections 58 and 59 say that no other statutory authorisation could be granted until this process is finished.

I actually support the existing proposals under the existing regulation that before any NT Minister makes a decision that might have a significant effect on the environment, they do not do it. This is the law at the moment until they are in receipt of the environment recommendations. I have no problem with that concept. I have more of a problem when people are saying it is not a veto when it clearly is.

A little bit more contentious maybe, but I believe this Bill definitely reduces the power of NT Ministers at the expense of the NTEPA. As I said before, an EPA that is Territorian by its title only. Under section 65 and 66 of the Bill, it is the NTEPA who is defined under section 4 as a decision-maker and is bound by the principles of ecologically sustainable development with all its flaws and restrictions and focused only on one side of the fence. It is responsible for delivering the Minister a draft environmental approval or a statement of unacceptable impact.

Here is the problem, the Minister has given—what I say is reasonably illusory and too light—powers to consult with other people. Only the Minister is subject to section 70 and 73, not the NTEPA. The NTEPA quite properly should be focused on its core area of the environment. So it is a flawed system. You are getting these reports delivered up to the Minister by a statutorily defined decision-maker with limited scope of what it can do. What is being touted as an advantage comes back to bite you. The Minister has to make a decision within 30 days.

What that really says is that the Minister has to rubber stamp something because if you have had an independent EPA backed by the power prepare after a—most environmental assessment processes take two and a half years. If their culmination of that from the NTEPA is to deliver a report of unacceptable impact or the onerous conditions and the Minister has 30 days to turn around and say no, with the Minister being the only one with the breadth after the consultation and all the rest of it to be able to countervail what has been put up to them, that is both politically and practically unlikely to happen.

You have delivered your development power of the Territory to a significant degree to the NTEPA. With the greatest respect to the good people on that body, that is not appropriate for the Territory. They should be used for what they are there for which are fearless independent experts making their recommendations about the environment but the balancing should be occurring elsewhere. That is not their job.

The issue was driven home, by who is now the Chief Justice of the Supreme Court of Western Australia, in a report that he wrote into the Western Australian *Environment Protection Act.* They have made some changes now and some things are different. But it is a crucial distinction.

The NTEPA having done all that work for the Minister, it is very hard for the Minister to successfully step away from that in the face of everything that has been done. If the Minister rejects the NTEPA reports there is always the issue—there is always the issue because everyone should be subject to the law—about challenge and having the Minister to remake the decision.

It has already been stated and I do not want to harp about it but I do want to say, as a Territorian, I find it disappointing that of eight members of the NTEPA, seven are interstate. That is not consistent with the aim of the government to bring people to the Territory, it is not consistent with the Territory's desire to be self-governing and it is not building capacity in Territorians. What we are seeing is they are adding more people with different expertise from areas which they are now moving over to regulate, such as mining, fracking, things like that. Just have environmental experts and leave the other experts back at the department.

It will increase time taken to undertake environment assessments and it will increase costs. Time is cost, it is not only employing the experts; it is renting your office every day, paying your employees and all the rest of it. The economic studies Australia-wide and internationally say that the most significant cost is not actually the dollars, it is the time and the time cost of money.

When you add it up, if everything was done at the minimum, that gets completely underwritten or abandoned when you get enormous terms of reference with enormous scope requiring 10 000 pages. Who, with the greatest respect, would struggle to read this, synthesise it and make something out of it.

Getting focused in the first part is the key problem and as soon as you blow out that, there goes your time frame. Honestly, with the greatest respect for community involvement, the questions which come in all need to be answered and the more you have, there is an appropriate degree, so this extends it, makes more of it. That all comes with more time, more cost and there is reference in here requiring more experts for particular cultural things. Rather than just responding to the circumstances of the case, it is mandating things and that is not a good approach.

I have said it will stifle innovation and reduce the growth of the Territory. I say that for this reason, the new concept of permanent declarations of protected areas and declarations of prohibited actions. We have sites of conservation significance which may be well-known to many people here. When they were introduced many years ago, there was absolute assurance by all government, quite properly, these are going to be quite large areas of environmental significance where they serve as an alert. If anyone is going to intrude upon this area of significance, we know that there is something to focus on and deal with.

Those areas have become no-go zones under the fracking moratorium and, to me, the declaration of prohibited environment areas is ripe for all SOCS to fall into those categories. When I read it, I thought that is where the SOCS belong, but it does not belong there, that stifles innovation. Rather than saying to someone no, you cannot even put forward a proposal, you should say 'oh, you have got a proposal in relation to that area which is quite significant'. We have got to really be focused about at least this aspect of it.

Over time and with technology things change. The proof of that, we have banned seabed mining in 2010 or 2011. The NTEPA was directed to write a report in relation to it in 2012—they were commissioned to do it. In 2019 there was still no report. Whereas the CSIRO and the rest of Australia see the next future of low impact mining as seabed mining and the Territory has already consigned it.

That is why I say it could stifle development and reduce the growth opportunities for the Territory. It does not respond to particular circumstances appropriately. Why do I say it has been introduced in a manner that is not sufficiently honest and transparent? For these reasons: the NTEPA said this was responsive to the Territory's circumstances, but where is all the massive environmental disasters, the issues that would mean that this would actually fix the problem. I do not think it will, it is the same but putting the power in a different person.

They said it is in keeping with the principles of ecologically sustainable development but then do not define that or at least point out how differently it is defined from elsewhere that people generally understand that concept. It maintains it introduces a tiered system, but there was already a tiered system—inquiries, EIS and PERs (which were not properly or actively used). Those triggers—there were already triggers out there. The NTEPA already publishes a number of publications, e.g. under the *Planning Act* but if you have a planning proposal, here is a matrix of checks you tick, if you ever answer no to any of these, you should refer it. There are similar ones for mining et cetera.

But what are they all doing? Even in the legislation, you can have all the triggers you like but at the end, there is always the core concept, all matters that may have a significant effect on the environment should be referred. The triggers are simple ways to try to increase people's certainty of when that occurs—actually all triggers really must or should meet that definition. It is just a shorthand way for people to be clear about when they trigger what the NTEPA considers that definition.

I have had QC's advice about how that is interpreted and the view is, that bar is going to be set relatively low, which is appropriate. The NTEPA should consider things that are reasonably low level. The real trick is then what to do with it, whether to assess it, assess it without conditions or make it a PER or an EIS. That is really where we fall down.

Early on, we were the ones that pointed out to the government that there is a COAG system in place. It talks about the need for regulatory impact statements. Do you have one for this process? Then we saw a regulatory impact statement proposal come out. We participated in it as did many other people and I find it disappointing and less-than-transparent, for government not to release that information to everyone. I do not know what it says. It could say that this Act will reduce not only costs but time.

I think I have probably said enough. We have a lot of specific issues about specific provisions of the Bill that are set out in section eight of our report. There are 35 of them; I am not going to go through those. With that, I finish my statement.

Madam CHAIR: Thank you, Mr Stephens. I will open it up to the committee for a few questions.

Mr TORGAN: I will truncate my statement to get to questions but I did prepare a few comments specifically on DENR's response to your written questions after the 29 July public hearing. Specifically I will limit it to ecologically sustainable development.

In response to those questions, DENR defended stripping out social and economic considerations from the principles of the ESD because economic considerations are inherent in the definition of environment and to include the references to cost-effectiveness and economic considerations would create ambiguity. We believe that it is DENR's approach that creates the ambiguity and as we have submitted, creates a decidedly anti-development bent to the legislation.

The decisions under this Bill are to be made having regard to the principles. If the principles have been deliberately altered to remove certain elements of the environment from consideration, then ambiguity has been introduced into the decision-making process, especially when viewed in comparison to primary sources of the principles which in Australia would include the National Strategy for Ecologically Sustainable Development endorsed by Council of Australian Governments and which I might add, include economic considerations and cost-effectiveness amongst its guiding principles.

It is also inconsistent for the drafters of the Bill to oppose use of language regarding right to develop and cost-effectiveness from the Rio Declaration in the precautionary principle and the principle of intergenerational equity because it does not appear in the EPBC Act, but then refuse to include economic considerations in the decision-making principle which does appear in the Commonwealth Act.

As we noted in our submissions, it is this pick-and-choose approach that leads us to believe that this Bill has been drafted with an expressly anti-development slant by boxing in the decision-making abilities of the Minister. With that I will hold off on the rest of my comments.

Mr WOOD: I need to absorb all of that. It is very interesting and I need to go through what you have said. I just want to know from a Commonwealth perspective, because the Commonwealth has also some controls, have you had a look at where this legislation conflicts with Commonwealth legislation?

It is not a lawyer talking here, but if there is a conflict between our legislation and Commonwealth legislation, then Commonwealth legislation would override that?

Mr STEPHENS: There is no conflict. In fact, this legislation has provisions in it that allows—quite appropriately which is already done under the existing legislation—to have a single assessment process, but then an assessment report comes out from the NTEPA and it goes to the Commonwealth Minister and the Commonwealth Minister issues a licence. But the Commonwealth Minister is limited to 12 matters of national environmental significance. So, it is only if it is one of those triggers that the Commonwealth Minister gets involved.

Then you will have whatever the Territory's responsible Minister decides how to regulate it and the Commonwealth approval. You have no choice, you have to meet the Commonwealth approval. If that is inconsistent with the Territory requirement the Commonwealth will prevail. In my experience, I have not seen that happen. There are usually some efforts between the authorities to make sure that does not happen. The Commonwealth is focused on migratory species, Ramsar wetlands, uranium or those matters of national environmental significance, though it is generally not a problem.

Mr WOOD: I had another question. I might leave it for a minute while I get my thoughts in order.

Mrs FINOCCHIARO: Essentially, in Ward Keller's view, the removal of some of that wording from the Rio Declaration really reinforces an anti-development starting position?

Mr STEPHENS: Honestly, I do not really like the word 'anti-development'. I just prefer to ask about the focus of what is going on. The focus here with the removal of those words is all about the environment. Of itself, I have no problem with that. But when you come to making a decision about whether a project will proceed that will definitely impact on the environment, unless there is a balancing mechanism, the answer must be the development is unlikely to proceed. That is at …

Mrs FINOCCHIARO: Because there will always be an impact.

Mr STEPHENS: Well, it will always have an impact. You cannot have a mine without having a hole, a new lake and a new mountain. You cannot have a pipeline without digging up several hundred kilometres. You cannot have an LNG plant without emitting greenhouse gases.

For all the price of everything we enjoy in a modern society, you cannot forget that there is a price to pay. That price should be studied, documented and mitigated as far as possible. But if what we are really saying, when you read this legislation, is that it is the environment above all else, we have consigned ourselves to a non-development Territory. As a Territorians with, relatively speaking, a large Territorian business, I have not signed up for that. I want legislation for the benefit of Territorians and I want people to weigh cost and benefit. I do not want us to be driven by only looking at the cost, because that is not an appropriate way to decide whether or not activity which should benefit all Territorians, should proceed.

Mr WOOD: Is that not the definition of sustainable development?

Mr STEPHENS: Well, not really …

Mr WOOD: No, no, I am not saying here. Your definition is what I believe sustainable development is about weighing the balance up between the damage and the cost benefits and the word they use, intergenerational. I say the effect on future generations.

Mr STEPHENS: Generally, I believe many people in government believe that this is it—they can do it this way. But I am saying I do not know. It is not like that. I hope the reason for taking this unusual step—I generally as a rule would not make public statements like this, given the firm I have and the people I represent and all the rest of it, but I am concerned about the real effect of this on the Territory because I do not think what we are trying to achieve is being achieved by this legislation. It has the real chance of undermining what I generally think we all want—which is that absolute weighing.

I am not suggesting we do not have regard for the environment or that some projects deserve a no—not at all. But we already do that and have already successfully done that for the biggest project we will every have in the Territory. For all the mines we have, we have $450m out of the $1bn in Territory own source revenue this year.

These things that have an impact on our society are critical so all of us. It is not just about money it is about jobs, development of infrastructure and opportunities. You cannot be a mendicant in society where we are happy not to change our environment but we will have all the benefits of the phones with all the minerals in

them and the electricity that is provided by gas from somewhere offshore. You have to accept the cost as well but you have to make a critically focused decision every time. Is the cost worth it?

I have tried to demonstrate through—I am maybe tiring you—stepping this out, why I think that this does not appropriately do that and has a significant risk of not meeting that most fundamental objective.

Mr WOOD: Can I ask about the EPA—I was involved when the EPA first came into the Territory, there was a lot of discussion about whether we needed one because we had the department of the environment then and if we had one, would it turn into a bureaucracy like Western Australia. They have a huge EPA and my understanding is that they do subdivisions and all sorts of things. We have an EPA at the moment that I presume has a statutory authority principle and it looks at projects and makes a decision and that is the decision that the government has to look at before it decides.

What is the difference between what we have now in relation to the EPA and what will be the difference under this new Act in relation to the EPA and its relationship with the government or the Minister?

Mr STEPHENS: The most crucial thing is that at the moment the NTEPA makes a recommendation to the environment Minister. The NTEPA produces and signs off the assessment report. You can see the last one signed by Paul Vogel. The Minister gets to comment on it and then the environment Minister hands that over to the relevant Minister—let us say the mines Minister because everyone seems to focus on that but it could be anyone else—and then that Minister does the weighing.

That Minister can choose to only take part of what the NTEPA, substitute its decision and decide that that is the way we need to protect the environment and says it probably should not proceed but the benefits of the project outweigh that so I am going to compromise that bit, change my recommendations, use my experience or my department's experience—an expert regulator in this area—and do that.

This new one, the way it is going to work now, the responsible Minister can do all that he or she likes by the NTEPA is only feeding up to the environment Minister and does not have the scope that the environment Minister has in terms of thinking about other things. If they are doing their job properly they are much more bound by ecologically sustainable development without clause 70 and 73, they have to deliver that report and then the Minister can override it, but the Minister is bound him or herself by ecologically sustainable development, the objects of the Act and all those other things with a very slight concessions to overturn that decision. While it is theoretically possible, I am saying to you that it is a real challenge.

It is a challenge politically. You need a fair bit of spine when the whole groups are saying that the independent—as if that is of itself some great thing, just being independent. Being independent is not always the best thing. Especially if you are not a Territorian.

Mrs FINOCCHIARO: You are talking to the wrong person.

Mr STEPHENS: You need the political spine and support to override that and you have to be able to legally and practically do it when everything was weighted in serving up recommendation 'a' and you want to say 'b' and you have 30 days to do it, to countervail all that effort to reach decision 'a'. It is not fanciful but it is not far from it.

Does it expose potential—I act for project proponents and we always deal with people who do not want projects and you see it with Adani and everything else. People who just want to stop because they have a particular view of the world. This disproportionally increases the opportunities for those people.

I am not saying people should not have a say and people should not be able to challenge it, but that is weighted against good decision-making.

Mrs LAMBLEY: We are going to have to move on. Thank you very much for your time, Mr Stephens and Mr Torgan.

The committee suspended.

Arid Lands Environment Centre

Madam DEPUTY CHAIR: Good afternoon, Alex. This is Robyn Lambley the Deputy Chair of the Social Policy Scrutiny Committee. Welcome to the session this afternoon.

First, I would like to acknowledge my committee members in attendance today: the Member for Namatjira, Chansey Paech; the Member for Sanderson, Kate Worden; the Member for Spillett, Lia Finocchiaro; and our Chair, Ngaree Ah Kit, the Member for Karama. She has just stepped out for a few minutes and will be back shortly. I welcome you from the Arid Lands Environment Centre joining us this afternoon, Alex.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and 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 hearing you are concerned that what you will say should not be made public you may ask the committee to go in to a closed session and take your evidence in private.

I will ask you to state your name for the record and the capacity in which you appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions.

I also forgot to acknowledge the Member for Nelson. Gerry Wood is also joining us this afternoon.

Thanks Alex, if you could state your name and your position.

Mr READ: My name is Alex Read and I am the Policy Officer with the Arid Lands Environment Centre.

Mrs LAMBLEY: Would you like to make an opening statement?

Mr READ: Yes, thank you. Good afternoon to the Chair and committee members. To begin I would like to thank the committee for the opportunity to appear before you today. This process is critical to democratic law-making and confidence in the institute of parliament.

I would like to acknowledge that I am speaking to you today from Central Arrernte country and to acknowledge the elders of the country past, present and emerging. Indigenous environmental and cultural knowledge needs to be safeguarded and valued, protected and restored for environmental health.

The work of the department today should also be commended. It is a really challenging body of law that is forging a new path for the Northern Territory. The commitment of the department to getting a reform in to a Bill before parliament should be recognised.

This Bill is the most significant reform of the system of environmental governance of the NT since its creation more than three decades ago. The Bill before parliament represents a victory for all those who love the landscapes and places of the NT and to ensure a health livelihood for current and future generations.

It is an opportunity to implement an Act which will move the NT forward and safeguard all of our futures. It is a critical juncture for the NT. It is an opportunity to hold strong and deliver a responsible policy that supports communities and environments rather than pandering to the narrow ideological and economic interests of a select few.

This is time to act in the interests of all Territorians and to take our duty of care to the environment and future generations seriously. While it is a promising start, the Act simply establishes the basic minimum acceptable standards of modern environmental protection. It is about evidence based accountable, transparent and independent decision-making. These are the core principles of good governance which are crucial for a healthy functioning, democracy and economy.

The Arid Land Environment Centre is the peak environmental organisation in Central Australia. ALEC has a long and proud history of empowering communities to participate in decision-making to protect the places that they love and enjoy.

We have been working to safeguard the health of people and country since 1980. We work within a broad network of over 400 members and 2000 supporters who care deeply about the NT.

We work within this network to ensure that environmental factors are properly integrated in to decision-making to ensure that environmental issues are properly valued. For too long environmental issues have been considered as externalities, falling by the wayside and we all pay the cost of this. Environmental and human health are all interconnected and this law needs to recognise and uphold this. This Act is therefore also going to protect the people and communities from the impacts of environmental degradation which is absolutely fundamental at this time of growing ecological issues, climate change and resource depletion.

The litany of environmental disasters, loopholes and scale of legacy contamination is concerning to say the least. Industrial activity is shrouded in secrecy and opaque process. It is clear that a new Act is sorely needed.

This Act is a monumental change from only tens of pages to a properly comprehensive framework. Reform is not just about the environment, it is about people and communities. We know full well the risks of environmental contamination from mining and other projects. Contaminated ground water and heavy metal pollution can, and have, completely destroyed livelihoods in the NT. Arguing against reform is wilful denial of these catastrophes. Redbank copper mine is an ecological dead zone.

The government and industry have a duty of care to ensure that they do not risk the health of the environment and community for the pursuit of profit. To argue against this reform is to argue for the continuation of these polluting legacies which will continue to risk public health.

I work within a broad community in the NT and hear every day about the failures, accidents, pollution and degradation that characterise the track record of the NT. The NT has a very poor reputation in environmental protection, which is no secret. As we know from these disasters, we have a responsibility to act. Indeed, this is the duty of care that all Territorians and future generations are owed.

The NT is moving into an uncertain and challenging future with many emerging threats. Unconventional petroleum, large-scale agriculture, mining and climate change are placing increasing pressures on the NT. There are five large mining projects that are proceeding through assessment in the south. These need to be properly managed and regulated so they do not leave a legacy of contamination that has so often been the case for the NT.

The critical recommendations from the Pepper inquiry was to have a clear separation between agencies responsible for promoting an industry and those managing the environment. The importance of this Act in providing accountable and transparent government can, therefore, not be overstated. Another key finding from the inquiry was the lack of public confidence in industry. Without these laws, there will not be any public faith for industry to operate in a way that properly protects the environment.

The majority of indicators have indicated environmental health in the NT is deteriorating—soil, water quality, threatened species and ecological integrity, for example. Environmental assessment plays a fundamental role in outlining a system for environmental health, producing information and data that informs our knowledge in working beyond harm minimisation to ensure that projects are able to restore and rehabilitate environment condition. It is no longer acceptable to just minimise harm, we must be working to restore ecological health.

Since its inception decades ago, these laws have not been properly updated. We now have a once-in-a-lifetime opportunity to transform a system of environmental government into a modern, transparent accountable and independent framework that embraces modern environmental changes.

The majority of stakeholders in this reform have supported the introduction of a strong Environment Protection Bill. This is really important to know. A small minority have been fighting to weaken it and that has led to some significant concessions along the way. These concessions have weakened the Act beyond the initial intent of the reform. These voices are not as loud as the rest of Territorians who recognise we are all entitled to clean air, water and land to support our livelihoods. Those who seek to compromise or weaken this law in order to suit their narrow ideological agendas should not be given a louder voice when the overwhelming majority of Territorians want the NT to move courageously into a more sustainable future.

Our economy has disturbed the environment. We need this law to deliver sustainable projects that do not jeopardise other industries and environmental health. This is not economy versus the environment. The economy operates within the environment and is dependent on the health of our natural system. Primary industries require healthy soil, water and air.

There are many industries in the NT that are calling for this Bill and recognise its crucial importance for providing economic stability through policy certainty. It has been distorted by a sector of the economy that

sees this as a threat. We should all be very alarmed at this lobbying. If an industry cannot afford to work in a way that does not compromise our health and environment, then they are not the industries that we want operating here.

Legacy contamination is already costing Territorians millions of dollars, and this does not even include the uncosted harm to environmental systems because of degraded waterways and soil. Protecting the environment should simply be the cost of doing business. The clear fallacy from certain industries is that if they are not investing in environmental protection, it does not mean that these costs simply disappear. These costs are transferred on to the public in the form of degraded waterways or diminished pastoral productivity or the rehabilitation efforts on a legacy mine lease. These are known as ecological goods and services. The cost of these through environmental degradation are not known, but are likely to be significant until we ensure that industries pay their fair share.

This is why it is so important to include ESD and the 'polluter pays' principles and ensure that decision-makers apply it. This is about taking preventative management steps to reduce the costs of environmental harm. We know that some large rehabilitation bonds have been vastly underestimated, leaving the public in debt to the tune of millions. These costs cannot continue to be left to the public. The choice we have here is clear. Should those who profit from environmentally harmful activity pay for environmental protection or should the rest of the public in the NT?

There is an important conversation we need to have as a Territory. What is the cost of development? Are we prepared to accept ecological dead zones, thousand-year legacies of heavy metal contamination and people displaced from country and culture? This is therefore an issue of economic justice and intergenerational equity. The voices of those who only care about cost do not offer much to resolving this debate.

The other crucial point worth noting is that it is only a narrow component of the industry in the NT that are resisting this reform. There are many industries such as the carbon fund industry that recognise the value of this Act to provide policy certainty and facilitate sustainable development. I have also heard from mining companies in the centre who acknowledge that this reform is way overdue and that it was only a matter of time until we updated our systems to be consistent with the rest of Australia.

It is largely disingenuous and reckless for some companies to hold the economy of the NT to ransom. Our mineral and resource wealth is not going anywhere. It is worthwhile noting that no one from industry is speaking about the monumental costs associated with legacy projects, the impact of heavy metal contamination of animals in MacArthur River, the heavy metal dead zones of Redbank mine or projects that simply slip through the cracks.

Industries are holding healthy communities and landscapes to ransom to support their profits but this is a false dichotomy. Projects can function with proper environmental responsibility and this is now the minimum standard accepted and expected by the public. Social licence to operate is no longer possible without taking environmental responsibility seriously. Arguing against this reform is simply arguing to operate within the impunity and we need to ask whether these are the kind of industries we want to operate in the NT.

We should all be very concerned by arguments that they cannot afford this reform. The attitude of entitlement to policy development is a threat to the public interest and the future of the entire NT. It was also misleading for industry to argue against these reforms by suggesting it is impacting their viability. This Bill can hardly be responsible for impacts before it has become law.

Politically this reform is also of crucial importance as it was a key election commitment. Government must deliver a strong environment protection Bill to maintain public confidence and faith in government. An overwhelming majority of Territorians support this reform and they understand very clearly that the current system is failing and a new model is desperately needed. We need to look to the future in both modern environmental challenges and set a clear path towards a sustainable future. Only with strong environmental law for the NT is boundless truly possible.

This reform is drastically needed to bring policy certainty. It will outline a transparent process and steps for proponents to engage, if they seek to undertake an activity with an environmental impact. You have heard that some industries are worried about uncertainty but this Act will create the process for outlining clear standards of activity and behaviour. It is vital to have a clear separation of powers to make independent decision-making.

My work is to hold industry to account and it is always a struggle, if not impossible, to find information about harmful activity. The Act will improve the availability of information and promote open processes to hold

operators accountable. This Act will appropriately constrain the discretion of the Minister. Decisions will be based on independent and strong advice from the EPA which is the appropriate check and balance on the decision-making of the Minister.

With a crisis of government confidence, it is vital that there are processes in place to manage conflicts of interest. Community confidence in these laws is really lacking. The Pepper inquiry made it abundantly clear that Territorians do not trust industry to do the right thing with strong laws absolutely necessary to improve public confidence.

Crucial to this is certainty in transition time lines. It is simply bad policy to require one industry to comply with the law while others are exempt. The environmental laws in the NT make this jurisdiction a national pariah. This is a reputational risk if we are not seen to be a place that respects and values the incredible natural beauty and wealth of our ecosystems. This law therefore has an important symbolic role to play in outlining clear standards to make it clear that environmental protection is the cost of development. If we cannot afford to protect the environment, that enterprise is simply not successful and should not be accepted in the NT.

We need to become a place that says to people that want to move here that we acknowledge the importance of that natural beauty. These laws will be necessary to safeguard the lifestyle supported by the environment that we all enjoy as well as protecting public health. This Bill will create a significant shift in the framework of environmental assessments by introducing a vital layer of accountable decision-making to environmental approval. The rest of Australia understands this importance and uses environmental approval as a way of ensuring that decisions are made according to the best available science, independent and acceptable to impacted communities.

This approval is an effective tool for ensuring that once operating, activities are subject to strict compliance and enforcement to provide for more transparent and accountable decision-making throughout the entire life cycle of the project. Improved transparency, independence and accountability is crucial at this time when public confidence in government and corporations is waning.

It is important that we note our concern with the process of consultation and engagement. Critical aspects of strong environmental protection have already been dropped because of industry lobbying. We are concerned that certain interests have been given disproportionate access to decision-makers to the detriment of the public interest. The reality of this influence is obvious in the detail of the Bill.

A critical flaw in the current Bill is that it provides disproportionate influence to proponents of an action against the broader public and community. There are sections that allow a company to apply for exemptions from information and compliance requirements. A company can simply request that they do not have to provide information if it inconveniences them.

Section 113 allows a company to be exempt from providing crucial project information that is a true veto. A veto of compliance only protects the economic interests of a proponent against all the cultural, social and environmental factors.

Providing a draft approval to a proponent is inappropriate and prioritises the interests of a developer against the environment and community. A statement of unacceptable impact is open to proponent consultation. This is entirely problematic and will allow only the proponent to influence decisions.

Decisions should be guided by independent robust science and expert feedback and community engagement. There is an obvious conflict of interest to consult a proponent on whether the project should be approved or not. Furthermore, it is simply hypocritical for groups to be concerned about transparency when we all have to fight tooth and nail for information about what a company seeks to do to the environment.

We know from our members that this reform is supported. Furthermore, the vast majority of stakeholders in this process also support the amendment and strengthening of this law. There are loud calls of support except from those who are not willing to take environmental care seriously. We are calling for the inclusion of climate change, merit and judicial review, proper engagement with Indigenous communities and properly empowering the public to participate in decision-making processes. These are all best-practise environmental law, nationally and internationally.

In addition to the Bill, there must be a commitment to properly resource the department to undertake the increased cost of monitoring compliance and enforcement provisions. The Bill is strong and a significant improvement but there are critical weaknesses which need to be addressed and amended so they can properly protect communities and environments in the NT now and into the future.

This is a critical moment for the NT and I implore the government to pass the Act with all the suggested improvements as with the majority of other stakeholders in the NT. Thank you.

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

Mr WOOD: You mentioned some critical issues have been dropped in favour of development. Were you talking about the existing legislation or the new legislation?

Mr READ: Yes, the current Bill has got review sections which have been dropped from it.

Mr WOOD: That has been put back into the new legislation, is that correct?

Mr READ: Yes, I think that this was an absolutely fundamental part of strong environmental law and this has been a commitment from the government as well as the recommendation from the inquiry that open standing for judicial review and merit review is vital to having a way to effectively engage in decision-making. Because of this option being denied to impacted communities, we were effectively locked out from the decision-making process. The judicial review is the only way of making sure that we can assess decisions against legal standards and merit review is making sure there is an acceptable decision-making processes in play.

Mr WOOD: But you would still be part of the normal process when there is an environmental impact statement being put forward? You would still be able to put your views in that process?

Mr READ: You can put your views into that process, of course, but there is very little way to hold the decision-maker accountable if they decide to disregard that advice or those comments, even if they are really serious and well-founded concerns from communities that would be impacted by that project.

Mr WOOD: Should there be some limitations on how long those judicial reviews can take? There can be the argument that people might do it just for the sake of holding up a project, not because there is perhaps any great depth in the objection, but they do not like the project and one way to hold it up would be to go down the judicial process. Should there be some guidelines as to what the limitations are on that process?

Mr READ: It is important to make it clear that judicial review is only about making sure that decisions are made according to law. These are not ideologically motivated challenges these are spreading accountability and compliance responsibility out to the broader community. If people see concerns with the integrity of the process or whether it is being made properly according to law, then they can make a claim for judicial review.

The claim that a judicial review is going to hold up projects and extend time lines is largely unfounded. It is rare to find that a project has been completely shelved or dismissed because of successful judicial review. It is not a well-founded risk to projects in the NT. That is a question for the court to decide anyway, that is not within the ambit of the Act to set out a clear time line for judicial review.

Mr WOOD: Thank you.

Madam CHAIR: Are there any further questions from the committee? There are no further questions.

Mr Read, are there any closing points that you wanted to leave us with?

Mr READ: Thank you for this opportunity to be before you. I want to make it clear that this is a critical moment and an opportunity to acknowledge our history and move forward embracing all these challenges, including climate change and more mining and petroleum activities. There is a lot of support for this within the broader public in the NT and a lot of political and public confidence at stake here if this is not passed with the recommendations that are largely supported by the majority of stakeholders that have participated in the reform.

Thank you for your time.

Madam CHAIR: Thank you for your time, Mr Read.

The committee suspended.

Northern and Central Land Councils

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

I acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatijra, Chansey Paech; the Member for Spillett, Lia Finocchiaro; the Member for Sanderson, Kate Worden; and our parliamentary colleague, the Member for Nelson, Gerry Wood.

I welcome to the table to give evidence to the committee from the Northern and Central Land Councils, Greg McDonald, the Manager Minerals and Energy and Diane Brodie, Research and Policy Officer. Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

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

If at any time during the hearing 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 you appear before inviting you to make a brief opening statement and proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Mr McDONALD: Greg McDonald, Manager Minerals and Energy, Northern Land Council.

Ms BRODIE: Diane Brodie, Research and Policy Officer, Northern Land Council.

Madam CHAIR: Thank you. Mr McDonald, would you like to make an opening statement.

Mr McDONALD: Thank you, yes, I would. Thank you, Madam Chair and members of the committee, for the opportunity for us to present today. We acknowledge the government has stated the case for change and we support the government's reform agenda.

Firstly I would like to give a bit of background about the Northern Land Council. I would also like to make it clear that we are here today on behalf of the Northern Land Council however we are happy to talk to the joint submission that was submitted by both the Northern and Central Land Councils to both the December iteration and the more recent proposed amendments to the draft Bill.

The Northern Land Council is an independent statutory authority established under the *Aboriginal Land Rights Act (Northern Territory) 1976.* The key function of the land councils is to express the wishes and protect the interests of traditional Aboriginal owners throughout the NLC region. The *Land Rights Act* sets out the land council's core functions which include: identifying relevant traditional owners and affected people; ascertaining and expressing the wishes and opinions of Aboriginal people about the management of and legislation in relation to their land and waters; consulting with traditional Aboriginal owners and other Aboriginal people affected by proposals; negotiating on their behalf; assisting Aboriginal people to carry out commercial activities; obtaining traditional owners' informed consent as a group; assisting in the protection of sacred sites; and the NLC may direct an Aboriginal land trust to enter into any agreement or take any action concerning Aboriginal land. The NLC also fulfils the role of a Native Title Representative Body under the *Native Title Act.*

The NLC is here today to represent the interests of Aboriginal people who have a unique position in this process. They are the First Nations of the Northern Territory with all the rights that entails, including those enshrined in the United Nations on the Rights of Indigenous Peoples, the *Aboriginal Land Rights Act* and the *Native Title Act*. They are the majority land holders in the Northern Territory and also make up the vast majority of the population in remote areas of the NT. Areas where many of the activities that come under this legislation will take place.

They are the people who will live with the outcomes of these activities. For these reasons they deserve not to be considered one of a number of stakeholders. Their rights and interests deserve to be afforded extra

weight. In developing its position with regard to this Bill, the NLC is obliged to have regard to the public interest. By default, what is in the interest of the NT's largest landholding group is also in the best interest of the broader constituency in our view.

The NLC has something of a unique position in that we do not inherently support or oppose industry and development. In fact, we are frequently accused of being both pro and anti-industry at times, both in relation to the same event on the same day. The NLC's view is that economic growth and development does not necessitate conflict with environmental objectives. In our view, this Bill seeks to strike the right balance in that regard.

One of the NLC's roles is to support informed decision-making and represent the interests of our constituents. This includes entering into or refusing agreements with industry. Traditional owners have a diverse range of views but based on the number of land use agreements in place, to which the NLC is a party. There are over 800 land use agreements currently in place to which the NLC is a party under both the *Native Title Act* and the *Aboriginal Land Rights Act*, including 63 agreements covering 128 different minerals and petroleum titles.

The evidence is there to show that the NLC is supportive of development that is culturally, socially, environmentally and economically sustainable. If reforming the regulatory regime and restoring trust in government translates to increased confidence among Aboriginal people, this may in turn increase the number of consent decisions under the ALRA and lead to an increase in the number of land use agreements entered into by the NLC on behalf of the traditional owners.

Underlying the consent to negotiate process is a clear expectation that environmental outcomes are paramount to both operators, proponents and government. With the recognition that a healthy environment will provide for long term economic opportunities well beyond the life of an individual project.

It would clearly be short-sighted to achieve short-term gains at the longer term expense of the environment. As such, legislation should not be influenced by the Northern Territory's current economic circumstances but should strive to stand the test of time. A robust regulatory framework needs to be developed independent of economic considerations in terms of the current economic conditions and should provide certainty to industry, citizens and government in both good times and bad.

The existing legislation does not have sufficient checks and balances in place. In our experience, most operators are good corporate citizens ready to meet or surpass regulatory requirements. However, legislation should aim to mitigate the potential for environmental harm. Legislation must provide a safety net, in particular for the protection of traditional Aboriginal owners and native title holders and other affected Aboriginal people who hold significant risk with regard to environmental outcomes.

There are numerous examples within the Northern Territory where regulatory deficiencies and poor project management have resulted in ongoing environmental legacy issues, including those created under the current regulatory framework. We need to move forward in a better and smarter way. This is in the interests of industry, government and the general public.

Having decision-making powers being with the environment Minister, with the level of scrutiny to be determined by the environmental significance of an approval, provides certainty, independence, and reduces the risk of regulatory capture and removes the potential for conflict of interest that exists with the current sectoral approvals process. This is in line with the government's commitments to transparency and accountability.

Where the EPA identifies that a development proposal cannot be done safely or is deficient, the onus should rightly be on the proponent to come back and address those issues and present a better proposal. We welcome the inclusion into the Bill the requirement to consult with Aboriginal communities and address their values, rights and interests. However, as noted in our submission, this in itself is not sufficient. Specifically there is no indication of how compliance with the requirements will be implemented, monitored and enforced.

We strongly recommend a consistent approach between these reforms and those being undertaken under the onshore gas implementation plan in terms of implementing the 135 recommendations from the fracking inquiry, including provisions for standing. Where a standard is being introduced for one sector, it is in the best interests of Territorians that it should be applied to all sectors. We are greatly concerned by the removal of merits review from this Bill and we agree with the findings of the fracking inquiry that it is an essential component of a robust regulatory system.

We are concerned that the regulations are not being presented alongside this Bill. This seriously restricts our capacity to provide comprehensive comment particularly given that many of the key provisions that we believe should be in the primary legislation have been relegated to the regulations. While we would not want to delay the implementation of this legislation, we want to highlight the need for provisions around variations, exemptions and triggers to be included in the next stage of legislative amendments.

We emphasise the need to increase the participation of Aboriginal people and this includes ensuring that the board of the NTEPA itself includes adequate Aboriginal representation which it currently does not, improving the effectiveness of engagement of Aboriginal people, establishing an offsets framework and ensuring the inclusion of greenhouse gases within that framework, noting of course, the economic opportunities that the carbon economy does present for traditional owners especially in terms of Indigenous ranger groups and carbon farming arrangements that could be put in place under such a regime.

We also want to emphasise that it is imperative—and the members of this committee would be aware of—to properly resource the government in the implementation of these reforms. We oppose the very limited time frame for bringing injunctions for contraventions of the Act as well as the inability of the Minister to extend the time frame for making a decision, regardless of the complexity of the proposal.

We also have serious concerns about the limited provision for public consultation throughout the EIA process. In closing, we stress that environmental considerations are paramount in terms of current and future economic opportunities. We believe the Bill largely strikes a good balance between providing certainty and protecting the unique environmental values of the Northern Territory. We recommend its passage subject to the amendments outlined in our submissions.

Madam CHAIR: Thank you very much. Are there any questions:

Mr WOOD: I will ask about the merits review. You still can have merits review if someone wants to look at a range of issues. I think there are eight reviewable decisions that can be looked at by NTCAT. Are you saying that does not exist?

Mr McDONALD: We were talking about standing in relation to the merits review—that there should be broader standing.

Mr WOOD: Can you tell me what you mean?

Mr McDONALD: By the people who are eligible to apply …

Mr WOOD: You think it is too broad?

Mr McDONALD: No, we think it is not broad enough.

Mr WOOD: Originally, there were 43 reviewable decisions.

Mr McDONALD: I have a question for the committee. I was of the understanding that the provision for merits review had been removed from the latest iteration of this Bill—no?

Mr WOOD: Not to our knowledge. Well, not to mine, anyway.

Mr PAECH: No.

Madam CHAIR: We will clarify that next with the department.

Mr WOOD: All I have here is the number of decisions have been reduced from 43 to eight. I was under the impression it still exists.

Mr McDONALD: That is an important point and I would like clarification — can you can take that on notice?

Mr PAECH: We will be able to get a nod from the department if it is in there or not. They are in the room. No? Okay.

A Member: It is not a nodding answer.

Mrs FINOCCHIARO: We will ask them.

Mr PAECH: We will have to take that one on notice.

Mr WOOD: One of the problems with a big Bill like this—it is hard enough for lay people to understand what is in this Bill. As Ward Keller said, compared to what is in the previous Bill, this is a lot of pages. I know my family would have trouble dealing with this sort of complex legislation. Does the NLC have to walk the line between groups that support development and other groups that do not. How do you explain that this is a better Bill than the previous Bill, or whether the Minister should have the power in this Bill that some people are objecting to—but it was better in the previous Bill et cetera. I cannot imagine you can talk to everybody you represent—individuals.

How do you come up with your comments or submission in relation to this Bill—I can feel it covers what most Aboriginal people feel about these sorts of issues; put it that way.

Mr PAECH: Would they not do it at their meeting?

Mr McDONALD: Thank you for your question. It is a challenging proposition to try to represent the views of all Aboriginal people across the Northern Land Council's region. We certainly do not intend to speak on their behalf or for them. However, we underline and highlight the amount of consultations that we undertake. You are right in stating that there are broad range of views and that was acknowledged in my opening statement.

Maybe to step back a bit. Before I go into a detailed response, I will say that our submissions and policy position is not one that is either in favour or against development. In formulating our position, yes, it is underpinned by a huge range of consultations where we hear all of these views expressed. We also have the opportunity to consult with our full council—elected members and executive council members—on a regular basis.

In the seven years that I have been with the Northern Land Council, I have had an opportunity to consult directly—as has Diane—with a large number of Aboriginal people, which informs our position.

In being able to express a view that captures the broad range of views, we reiterate that we do not see it as a conflict between strong environmental regulations and supporting economic outcomes and objectives. We try to strike a balance where we support legislation that provides those checks and balances and weighs up the economic considerations adequately in a cost-benefit type of analysis.

Mr WOOD: We have had two points of view of it past us here. One is saying it does not have enough weight in the balancing between the environment and economic development and the land council is saying, 'We support economic development. We also support the Bill.'

I am seeing that conflict of ideas—if I can put it that way. That is not a criticism, but it is something I need to look at a bit closer when it comes to consideration of the Bill.

Mr McDONALD: If I may add a comment? It is not too dissimilar from a conflict that the government would find itself in, in terms of the government's responsibly of trying to consider all of the views of all of its constituents in formulating policy positions.

In terms of striking the right balance, we feel that the current legislation largely achieves that subject to the amendments outlined in our submission being implemented. We highlight specifically the need to increase participation of Aboriginal people, improve the effectiveness of the engagement with Aboriginal people, including some further guidance on how that is monitored and implemented in culturally-appropriate consultation and the need to implement the other recommendations we have made in our submission.

The access to justice provisions—I reiterate it is our understanding that merits view is not included in this iteration of the Bill. We feel and strongly state that that should be reinstated if that is the case. We recommend that the Bill be amended to reinstate the earlier test of eligible applicant or person for bringing injunctions and applying to NTCAT for review.

Mr WOOD: Thank you.

Mr PAECH: You are also stated you were disappointed with the government's decision to remove the general environmental duty?

Mr McDONALD: Yes.

Mr PAECH: You are suggesting that it should be reinstated in line with the approaches in Queensland and South Australia?

Mr McDONALD: Yes, that is correct.

Mr PAECH: Okay. For the purposes of my own knowledge, can you step me through what you mean by general environmental duty?

Mr McDONALD: I have been informed it was provided in the previous iteration of the draft Bill, but it has been removed from this version. However—I am sorry for answering your question with another question—in the time line it seems it has just been deferred into the next phase of proposed reforms. Is it intended that it will not be included in the Bill altogether?

Madam CHAIR: That is a question we would have to pose to the department, which is appearing next.

Mr McDONALD: Okay. My background is I am not a lawyer, so I will not enter into a discussion about the definition of general environmental duty. But I am happy to provide some more information in writing if you want our view on that.

Mr PAECH: Certainly. Thank you for that. How many ranger groups does the NLC have?

Mr McDONALD: That is a good question. Do you have that?

Ms BRODIE: Yes.

Mr McDONALD: We did prepare something in anticipation of that question. The NLC directly supports 12 of the 36 Indigenous ranger groups operating in our region. Through this program we employ 62 full-time equivalent rangers, 72 actual positions, plus more than 50 casuals. We have a very stable base with 80% retention levels and a young workforce where demand outstrips jobs. With the correct policy settings on carbon and biodiversity offsets we could double or triple the opportunities we currently provide.

Mr PAECH: Great. Thank you. I also want to touch on recommendation 4 to amend the definition of environment offset to specify that impacts include greenhouse gas emissions. Was it the Indigenous carbon …

Mrs FINOCCHIARO: The Indigenous Carbon Industry Network.

Mr PAECH: … this morning had also advocated for such. I want to ascertain what work the NLC does in working around that carbon offset? You are involved with groups like the Indigenous Carbon Trading Unit? Is that correct?

Mr McDONALD: We enter into agreements that are a direct result of the policies and legislation in place for offsets. That is why we are advocating for the offsets to include greenhouse gases because we believe that is the opportunity where we could really increase the participation and provide funding for a lot of these ranger groups that are highly valued and we think make a very valuable contribution to the Territory's economy.

Mr PAECH: Thank you. Consistently this morning from environmental groups, we have heard some mixed reviews about whether or not the terminology 'climate change' should be referenced in this piece of legislation. Does the NLC have a view on whether or not that should be incorporated?

Mr McDONALD: Yes, we support the inclusion of that.

Mr PAECH: The inclusion of that?

Mr McDONALD: Yes.

Madam CHAIR: Mr McDonald you mentioned support for the participation of Aboriginal people in the process. In regard to NTEPA, has the Northern Land Council previously pushed to have an Aboriginal rep on the NTEPA?

Mr McDONALD: Only through our written submissions to the NTEPA and through this reform process. I believe we made a similar comment to the inquiry into hydraulic fracturing while it was operating.

Madam CHAIR: My next question is in regard to page 12 of your submission under 5.6, Access to Justice. The first paragraph says:

> *The Land Councils hold serious concerns regarding the integrity of the consultation process for this Bill and the disproportionate influence which some stakeholders appear to have had on this process.*

Can you please elaborate on what you were referring to in your submission?

Mr McDONALD: Yes, certainly. That statement in the submission talks to some of the amendments that have come through in the latest version of the Bill with the time frames concerning the access to justice provisions and to contest those decisions that were made that were dramatically reduced to a 90-day period, I believe. We do not feel that is sufficient, especially in the case of more complex proposals.

There are a range of proposals and the amount of material you have to go through and expertise you need to engage to understand a lot of the complex modelling and data that underpins this. Then to come to formulate a view and then initiate proceedings, we feel that dramatic reduction in that time frame appears to have been something that moves away from striking the right balance and is probably to the benefit of proponents in industry rather than the general public.

Madam CHAIR: Thank you. Are there any further questions for the land council from the committee? No further questions. Do you have any further points you would like to raise with the committee before we finish?

Mr McDONALD: I would like to make a statement to assist in the understanding of some of the comments I made earlier. I talked about the number of agreements that we entered into. I did not provide statistics for the number of refusals to consent that are also passed through our consultation processes. I also want to make the point that our consultation process is underpinned by the free, prior and informed consent principle. That is an important principle that should be enshrined in this environmental reform legislation.

We Act on instruction. The NLC does not have a view whether a proposal should be supported or otherwise. We present the information about the proposal to traditional owners and they have the opportunity, under ALRA, to either refuse consent or consent to enter into negotiations.

The agreements that we enter into are a result of that consent being given, guided by the principle of free, prior and informed consent. However, there are also a large number of refusals to consent, especially in relation to minerals, petroleum titles and ALRA. I am happy to provide information about that as well. I just do not have those numbers with me.

Madam CHAIR: We might take that on as a question on notice. That would be really helpful for the committee to have. Thank you for offering.

Mr McDONALD: Thank you for the opportunity today.

Madam CHAIR: Thank you very much for appearing before us. We will take a quick break before we call before us the Department of Environment and Natural Resources.

The committee suspended.

Department of Environment and Natural Resources

Madam CHAIR: Good afternoon, everyone. 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 hearing on the Environment Protection Bill 2019.

I acknowledge my fellow committee members in attendance today: the Member for Araluen, Robyn Lambley; the Member for Namatjira, Chansey Paech; the Member for Spillett, Lia Finocchiaro; the Member for Sanderson, Kate Worden; and our parliamentary colleague, the Member for Nelson, Gerry Wood.

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, Alaric Fisher, Executive Director Flora and Fauna, Karen Avery, Executive Director Environment Policy and Support and Kathleen Davis, Director Environment Policy. Thank you for coming before the

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

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that 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 hearing, 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 appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing?

Mr PURDON: Paul Purdon, Executive Director, Environment Protection.

Ms TOWNSEND: Joanne Townsend, Chief Executive Officer, Environment and Natural Resources.

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

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

Mr FISHER: Alaric Fisher, Executive Director of Flora and Fauna, 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, Chair and the committee. I will keep my statement relatively brief even though I know you have had a whole day of listening to views, because it is important that there is the opportunity for you to ask questions, noting that we have already provided response to a lot of questions and they are now public.

Madam Chair and members of the committee, thank you for the invitation to speak again on the Environment Protection Bill 2019 on behalf of the Department of Environment and Natural Resources. I thank all the organisations and individuals who have made submissions of their interest in this important piece of legislation and those who have appeared before the committee here today.

There are a few points that have been raised in written submissions and directly to you today that I would like to comment on. These are all matters that have previously been explained and clarified in briefings with industry groups, environmental organisations and government agencies during the development of the Bill by either government or the department.

As I touched on when I previously presented to the committee, the definition of 'environment' currently used in legislation in the Territory is not just about the biophysical environment. I note that the definition of 'environment' has been a persistent issue throughout the development of this Bill. The definition of 'environment' also incorporates consideration of social, cultural and economic matters. In the current environmental impact assessment legislation this definition is maintained in this Bill. We are not changing the definition of 'environment'.

The incorporation of matters other than biophysical is important for the environmental impact assessment process because it supports a holistic consideration of a proposed action allowing decision-makers to understand the likely benefits and impact if an action proceeds. To only examine an action in its significant impact on the biophysical environment would give an incomplete and inaccurate picture of what the action actually means for the Northern Territory.

As is currently the case, the NTEPA receives advice on these broader matters from other government agencies with expertise in them, and this will continue. Under the proposed Bill, the NTEPA will incorporate this advice into the assessment report that it provides to the Minister for Environment and Natural Resources. The Minister will then be able to consider, based on the best information available, the entirety of a project's benefits and impacts in determining whether or not to grant an environmental approval.

In her consideration of the NTEPA's advice, the Minister is able to consult with other relevant Ministers—which was an amendment which was made to the Bill since consultation—further supporting a holistic review of the proposed action. The breadth of the definition of 'environment' ensures the Minister for Environment and Natural Resources must consider the economic and social implications of a development.

A refusal under the Environment Protection Bill will only occur where a proponent has failed to demonstrate the worth of its project in economic and social contribution to the Territory, compared to the cost of significant residual risks to the natural environment.

Contrary to some of the views presented to the committee, amending the current definition to require consideration of only the biophysical impacts is more likely to result in projects not being approved, not the other way around. This is because risks to the environment will not be able to be considered in the context of the project's economic or social benefits and outcomes.

Another comment I will make refers to what is being alluded to as the Bill giving excessive powers to the Environment Minister. I stress to the committee that the environmental approval established by the Bill is not an unusual arrangement in statute and does not establish a so-called power of veto that will stifle development. As I have explained, the Minister will reach a decision on approval through a holistic review of the proposal, including through consultation with other relevant Ministers. Our Minister is a member of Cabinet. The view that the Minister will make decisions that are not supported by government is both naïve and untrue in practice.

There are very compelling reasons for the responsibility for the environmental approval of a mine, for example, to sit with the Minister responsible for the environment rather than the Minister responsible for mining development. Confidence in decisions made in the interests of all Territorians and management of the perception of conflicts and bias are the obvious reasons. These issues were the key reason that the independent scientific inquiry recommended the transfer of environmental matters from the Resources Minister to the Environment Minister in relation to petroleum activities. That is now in effect.

A similar environmental approval is in place under the Commonwealth *Environment Protection and Biodiversity Conservation Act*, and has been functioning effectively for the past 19 years.

Another comment is the continued reference that it is legislation that will inhibit development. We have heard a number of times today and through submissions that this Bill will inhibit the Territory's economic development. As a department, we cannot agree with that statement. First, I reiterate—as I have said to many stakeholders and indeed to this committee in May—this Bill does not introduce new environmental obligations. It simply replaces an outdated, inefficient and ineffective piece of environmental impact assessment legislation.

There are many things this Bill does in support of the ecologically sustainable development of the Territory which the current legislation does not. It introduces time frames for decision-making at each step of the assessment and approval process, which are currently missing. Instead of leaving it to the NTEPA to determine through policy mechanisms how it will judge what is significant impact, the Bill identifies the criteria that are to be considered in making this judgment and allows the Minister, not the NTEPA, to determine the objectives that should be achieved in regard to the protection of the Territory's environmental assets. It introduces an environmental approval issued by the Environment Minister to be granted or refused within 30 business days of receiving an assessment report from the NTEPA. This provides a level of certainty about environmental obligations and an instrument that will assist proponents in obtaining investment that simply does not exist now.

On the other side of the scale, it provides a range of compliance and enforcement mechanisms that ensure that proponents take their environmental obligations seriously, from tools to ensure that projects are referred to the NTEPA for assessment when they should be—including powers for the NTEPA to call in projects where they have not—to powers to ensure that when environmental obligations are breached there are appropriate penalties and remediation and rehabilitation works to limit that damage. Fundamentally, it is a Bill that recognises that economic growth is intrinsically linked to the health of the natural environment. Without one, you cannot have the other.

This Bill brings the Northern Territory in line with other jurisdictions. It does not impose stronger environmental protection obligations on proponents than they would be subject to elsewhere in Australia, but it does impose obligations, and in doing so will help industry members to build their own social licence and obtain community support for their projects.

I will now talk about some of the more specific matters that have been raised—climate change. We just heard from the land councils on that issue. Some submitters have raised concerns that the objects of the Bill do not explicitly identify climate change or reduction of greenhouse emissions as matters to be addressed. The objects of the Bill are necessarily high level, focusing on environment protection, the achievement of ecologically sustainable development, the role of the impact assessment process in achieving environment protection and sustainable development and the role of the community during the impact assessment and approval process—specifically Aboriginal people as stewards of their country.

Climate change and the reduction of greenhouse gas emissions are significant issues to be incorporated into the environmental impact assessment of any proposed action. However, they are just one of many considerations against which a proposed action will be assessed. Each of these considerations do not have to be explicitly listed in the objects in order to be effectively considered.

The impact associated with greenhouse gas emissions and the changing climate are considered when decisions are made within an ecologically sustainable development framework in accordance with the ESD principles. Specifically identifying climate change in the objects would elevate this matter above other aspects that need to be considered when delivering environmental protections and ESD outcomes.

It should also be noted that the Bill also provides for the NTEPA to consider any applicable environmental objective declared under clause 28 of the Bill. The purpose of clause 28 is to provide the mechanism to declare significant matters that must be considered in the impact assessment process. It is through this clause that climate change is proposed to be identified as an objective to guide decision-making under the Bill, although I note in answer to written questions from the committee we have also recognised that impacts from a changing climate could also be given greater recognition by incorporating it into the purpose of an environmental impact assessment at clause 42.

What I am saying is it is not about not recognising the importance of climate change, but putting it in an object elevates it above other environmental matters, and there are other places it can and will sit.

There have also been comments made about draft regulations and claims that it is not possible to assess the Bill without seeing the proposed regulations. Regulations were released as a draft with the consultation Bill to provide stakeholders with an opportunity to consider and provide feedback on the whole framework. The draft regulations allowed stakeholders to understand the proposed environmental impact assessment process and how the Bill and regulations operate together. Feedback provided through that process on both the Bill and regulations have been considered and included as much as possible.

We have not released draft regulations with the Bill. This is because the next stage of their development is dependent on the Bill being finalised and passed. However, face-to-face briefings, published fact sheets and other communications with stakeholders have continued to very clearly identify the intent of the regulations and the elements that they will contain. I left a copy of how that would work with the committee last time.

I also reiterate that while the department released the consultation draft regulations in the spirit of openness and transparency, it is not usual for draft regulations to be prepared or released with a draft Bill.

We recognise that the regulations provide the procedural details of the Bill and there is considerable stakeholder interest in knowing and having the opportunity to examine and critique the proposed process behind the Bill. Accordingly, we intend to release the revised regulations for public review following completion of parliamentary processes on the Bill.

In addition to the regulations, the Bill will be supported through public guidance documents, providing a further level of detail and support to what is contained in it. This body of material will also be placed in the public arena.

The final issue is about consultation, and that is an issue that has also been raised today. I will make some comments on the consultation processes associated with the preparing of this draft Bill. The department has been working on the environmental regulatory reforms over the past three years, building on previous reviews undertaken in the Northern Territory and nationally over the last 10 years. Since we commenced, we have undertaken consistent and comprehensive consultation.

Over the past three years, there has been one-on-one meetings, workshopping of issues, public discussion papers and position papers, Internet resources, an active seeking of comment and input. On some occasions, the department has undertaken this consultation itself and on other occasions, the department has employed specialist communications consultants to take the lead.

Consultation is important in this reform process, as the Northern Territory has been working with the current *Environmental Assessment Act* for 37 years. Change is never easy, but the current Bill, compared to the consultation Bill, demonstrates the importance the department has placed on public consultation. The Bill before you incorporates significant changes from the consultation draft because we have continued to listen to the feedback stakeholders have provided to us.

There is diverse opinion on what the environmental impact assessment process should achieve and, therefore, what is contained in this Bill. There have been comments that the reform process has been rushed, but it is the culmination of three years of dedicated work in the department, and it also builds, as I said, on multiple reviews that have considered the Territory's environment assessment and approval system and other review work over the last 10 years.

What has been produced is a very different piece of legislation to the existing Act, but one that we think is considerably better. The Bill is pragmatic in balancing the competing and often highly polarised views of different stakeholders to establish an efficient and effective environmental assessment regime. It is a Bill that is based on the concept of ecologically sustainable development that provides definitions to support key concepts and decision-making criteria, that allows for tiered assessment and greater public opportunity for input and will better facilitate the social licence for major developments.

It will also bring certainty in assessment and approval processes through time frames, as well as the certainty of knowing what environmental conditions will be imposed on a development through an environmental approval. I encourage one of my colleagues to describe the current process to you in that certainty—and lack of.

Further consultation on the Bill in this polarised environment will not deliver a better piece of legislation. Further consultation will just continue the uncertainty that always arises when governments undertake legislative reforms.

The Bill before you delivers the best legislation to move the Northern Territory towards achieving sustainable development.

Madam Chair, this Bill is not for one industry or one sector of development in the Territory. It is for all Territorians now and into the future to ensure we maintain our environment so it continues to be productive and a source of opportunities for future investment and enjoyment.

I am very happy to receive questions from the committee.

Madam CHAIR: Thank you very much. I now invite the committee to ask any questions.

Mrs FINOCCHIARO: I want to ask about the omission of wording from the Rio declaration, which was raised a number of times today. The words, 'social and economic' and then 'cost-effective' are taken out. Why was that done?

Ms DAVIS: First, in the words 'social and economic' we are talking about one of the specific principles—I am sorry, I do not remember which one it is. I believe it is the intergenerational and intra-generational equity question.

The phrasing in the Bill uses the term 'environment'. We sought specific advice from our legal drafters on this issue and whether we should include the words 'environment, social and economic matters', which would be consistent with other jurisdictions. The advice we received was because we have a definition of 'environment' which very clearly includes the words 'social, economic and cultural matters' that by including it in this definition we were both being duplicative and introducing additional ambiguity because we were suddenly using the word 'environment' in a different way to the way we had actually defined it.

Mr WOOD: The general view of environment does not—if I asked someone who is looking after the environment, they do not say, 'I am looking after the social issues, I am looking after whether those trees stay there or the creek down the road is not polluted.' Maybe it is the definition that perhaps should be confined to what the average person thinks of environment and then the other bits are included later on for the Minister or the EPA to include.

Mr PAECH: That is only your view.

Mr WOOD: No, no. That is true, but most people talk about the environment as whether the sky or the air is clear and the water is pure.

Mr FISHER: It is a good point about that is the public understanding of the general use of the term 'environment'. I stress that the definition of 'environment' that we use in the Bill is the same as has been in the existing environmental impact assessment legislation for the past 37 years. So, it is not a new concept.

Mr WOOD: No. I was bearing in mind the statement about whether it was taken out of another document and removed because of that. I was saying put it back again but change the definition of 'environment', that is all.

Mr FISHER: One other general comment about the ESD principles. Some of the commenters have gone back to the Rio declaration which was the starting point for ESD—whenever that was again …

Ms AVERY: 1992.

Mr FISHER: 1992. There has been a lot of work on ESD since then, and the terms and principles of ESD have been refined over time since then. We have tended to use a more, I guess, contemporary reflection of ESD principles, particularly what is contained in other relevant legislation such as the Commonwealth's EPBC Act.

Mr WOOD: Jo might know why I ask. The precautionary principle is the one we use for water extraction, but we have no more than someone's view of the world that that is what it should be. If we are talking about precautionary principles, does it have a scientific background or is it just a nice, philosophical approach to the environment? I am not saying we should not be cautious with the way we deal with the environment, but does it have more than just a broad, philosophical or ideological concept behind it?

Mr FISHER: I guess it is a principle that is probably, in my view, the most well-understood and well-established of the ESD principles in the sense of a realisation over many years that we should not use the lack of understanding about a subject or a topic as an excuse not to make a decision. There are numerous theses and papers about that, but I guess that is the bottom line.

Mr WOOD: The problem is when you start to confine it to, say, the 80:20 principle and there is no real or perhaps not enough scientific backing to say that is correct, when it could be 70:30 or 60:40. We use these broad philosophical statements in here to make judgments as to whether a development should go ahead. Is there …

Mr FISHER: The way I would answer that is the 80:20 is an example of the precautionary principle in that in an ideal world we would have an exact model of a river system, for example, with all the inputs and outputs known, and we could feed that data in and get that we can use exactly that much water. The 80:20 rule is an application of the precautionary principle because we have come up with the best bet. In the absence of that perfect knowledge we have still come up with a best bet way of managing the system, rather than saying, 'It is too hard and therefore we will not make any decisions'.

Mr WOOD: It can be flexible. The principle can be flexible, surely?

Mr FISHER: Yes, the principle is simply that we should not use the absence of robust information to put off making decisions.

Mrs FINOCCHIARO: Going back to the definition. The department is satisfied that the broad definition of 'environment' includes social and economic …

Mr PAECH: And cultural.

Mrs FINOCCHIARO: And cultural. Can someone read it to me? I do not have the Bill. Where is it? Then, in the decision-making section, the department is saying that the EPA will then consider those issues because it is the environment and provide that advice for the Minister?

Mrs WORDEN: Environment, section 6. Do you have section 6?

Mr WOOD: Yes. There.

Ms TOWNSEND: As it currently does.

Mrs WORDEN: It just came from the old Act to the new.

Mr PAECH: The definition has not changed. It is still the same.

Mrs FINOCCHIARO: The reason it is not in there is because the lawyers think it duplicates?

Ms DAVIS: The reasons 'social and economic' are not duplicated in the clause, the ESD principle, is because the lawyers say, 'You already have the word "environment" there. It explicitly says you must consider the environment. The "environment" includes those other three matters. You would be doubling up if you actually put them back in.'

Mrs FINOCCHIARO: Thank you. Why has the regulatory impact statement not been published, or at least made available to participants?

Ms TOWNSEND: Regulatory impact statements are not publicly released.

Mrs FINOCCHIARO: Says who?

Ms TOWNSEND: Says everyone, says the rules. I do not know any RIS that has ever been released.

Mrs LAMBLEY: We have documentation—you have probably seen it—from the Minerals Council of Australia, saying that in the past the Territory government has not published the regulatory impact statements, but other jurisdictions—including the Commonwealth, New South Wales and other governments—have. Strictly speaking, they can be provided. Is there a reason why it has not been provided? It seems like there is a bit of pressure for you to stump up—particularly the mining sector, which will be, arguably, most impacted by this legislation—and provide the impact statement so they can assess fairly realistically, using their own data, whether or not it will be an improvement and mean greater efficiencies for them particularly.

Ms AVERY: The regulatory impact statement is developed to provide government with information to feed into their decision-making. It is not designed for any industry to say, 'Will this be better or worse for me, as an industry?' It is a tool of government to help inform their decision-making process in relation to legislation.

As Jo mentioned, regulatory impact statements have not been released in the Territory in the past. We understand it is government policy going back many government that that is the case.

Mrs LAMBLEY: This scrutiny committee has been tasked to somehow assess the pros and cons of this legislation. One of the allegations we have heard from quite a few people today is that this legislation will not mean greater simplicity, efficiency or effectiveness at all. Contrary to what you just said, Jo, it will in fact mean greater time needed to carry out the process, which means more money. What do you say to those allegations, which I am sure you have heard today?

Mrs WORDEN: Can I add to that because I have a question about time. Can you also, when you respond to that, talk about the allegation of clock resetting? Paul, you would have been here, sitting up the back. That was said twice by two different proponents, that essentially, the clock would be reset at particular times when things occurred.

Mr PAECH: The EPA. Once it goes there it is stopped.

Mrs WORDEN: Did you pick up on that earlier? There was a specific term. I think it is an industry term.

Mr PURDON: Not stopping the clock?

Mrs WORDEN: Stopping the clock. Could you talk about that a little, too.

Mr PURDON: Can we talk about time first, because that is a big question that was asked. Then we can move on to other things.

Mrs WORDEN: Yes, sure.

Mr PURDON: In relation to stopping the clock, that is a decision that the EPA can make at the moment under the current Act. Where the EPA can do that is when it is preparing an assessment report and it realises it does not have enough time to complete that assessment report. If it does not have enough time to complete

the report it is able to consult with a proponent and extend that time frame it has to complete that report. The EPA has done that a number of times in the last three years or so, and that will be front-of-mind for some people who have spoken before you today.

The EPA can also stop the clock when it decides it needs further information to inform its assessment, which then allows for a process of providing guidance back to the proponent about what further information is required to assist the EPA to complete their assessment report.

Those stop-the-clock processes are beneficial on one hand, in that they allow the EPA to get the information it thinks it needs to complete its assessment. But obviously, stopping the clock adds time and as we have heard from industry, will add money to their overall cause. They are not very enamoured with those stop-the-clock provisions.

In relation to this Bill—and Kathleen can correct me—those stop-the-clock provisions do not exist or are reduced.

Ms DAVIS: They have been tightened. Under the current process the NTEPA can consult with a proponent about extending a time frame and stopping the clock. Under the proposed process, they have to seek the proponent's agreement. It is a slight word change that makes quite a big difference to what the NTEPA will be doing and the rights of the proponents in that process.

Mr PURDON: That is a massive change in one word.

On time frames more generally, there has been a lot of interest and discussion about statutory time frames. They are an important part of what this Bill is trying to set up, in that every step of the process is being proposed with a statutory time frame associated with it. That is the processes the government, EPA and Minister is responsible for. We are all being held to account for our parts of the bargain. There are no statutory time frames for proponents to go out and do their information gathering and pull together their documentation—none.

That is the same, in that regard, to the current assessment Act. The current assessment Act and procedures have a fewer number of statutory time frames on government, which means that there are stages in the process now that can drag out—and they do drag out. That is, obviously, of concern both to us and proponents.

But the time frames for an EIS or assessment will vary dramatically. Over the last 10 years, we have had an environmental impact statement completed in 11 months. We have had others that have taken up to about six or seven years. That is not just because of statutory time frames, as you can imagine. There are so many factors going into the time frame required to complete the assessment of a proposal, some of which will be a new proposal somewhere in a remote part of the Territory where there is no information to support that proposal.

There is quite a bit of information gathering and scientific data to collect to inform that impact assessment—and not just to inform the assessment of the environment, but to inform the proposal itself. A mining proposal that needs to collect ground water data because they need to use ground water for their processing needs to collect that information for the project, not just to understand what the impacts on the environment might be in extracting that ground water.

Other issues that affect time frames are investment in a proposal. 'What is the price of gold at the moment and can we get more investment to take us to the next stage of gathering further information?' Projects change throughout the process as well. Variations in a project while it is going through assessment can mean that proponents have to come back to the EPA and say, 'We have changed this. Things are different now. Do we need to go and get different information?' That can all play out in time frames.

While I respect the interest in statutory time frames, we, as a department, are holding them up as a positive for this Bill—which they are. I do not think we should be overplaying the fact that there is a range of factors that can influence time frames for environmental impact assessment.

Mr WOOD: How will that be covered if the time frame is a part of the legislation? I presume the time frames will be built into the legislation?

Mr PURDON: The time frames …

Mr WOOD: How will you be—do not get this too much the wrong way—excused if you cannot fit within those time frames?

Mr PURDON: The time frames will be in the regulations other than the key time frame the Minister has to issue her approval or otherwise, which is in the Bill—and that is the key time frame in all of this when a proponent will receive their environmental approval. The other time frames in the steps of the EIA process will provide a framework for us to work within.

If we fail to meet those time frames, there is no legal repercussion. There is probably a fair bit of embarrassment and some ammunition for industry and whoever else to apply pressure to the department and the EPA for not doing what they have committed to doing.

From my and the department's point of view, those statutory time frames allow us to plan, prioritise and apply resources in a way that allows us to aim to meet time frames. If we do not have time frames now, we will prioritise elsewhere.

Mr WOOD: If you get 10 mining applications on the same day, how do you—where will you get …

Mr PURDON: You might struggle.

Mr WOOD: On one hand, we have Mr Langoulant saying we have to become more efficient and we need to tighten up where we spend money. On the other hand, you are trying to get projects off the ground and if you do not have enough people to deal with it, where will you fix it?

Mr PURDON: There are various factors there. That is time frame and being able to deliver it, depending on your resourcing capacity, how long the time frame is, how good the information is before you that you are dealing with, how many projects you are assessing at one time. We cannot control all of those. Those time frames that will be set in the regulations need to be set as best we can based on what we know of the demand for our services and the capacity we have. If we can see a peak coming on the horizon in completing assessment reports, then we can look at what our options are. But as I said, it allows us to at least plan for meeting time frames and apply resources as best we can.

Mrs LAMBLEY: Will this legislation mean a greater administrative burden, which has been alleged today?

Mr PURDON: The fundamental process of environmental impact assessment will not change significantly. What the Bill does, though, in setting different tiers of assessment which the department is comfortable with and the EPA thinks is more workable than what we have now lends it to actually reducing administration, both for us and proponents.

Mr WOOD: So, you will be able to have what—from the *Planning Act* you could have an inquiry, an EIS and a PER. Will you be able to divide an application? Say it is a new gold mine that will have a significant effect on the environment, but not all of that gold mine will have a significant effect. Will you be able to say, 'This is the bit we really need to concentrate on'?

You mentioned the road with the dust and the wallabies. I do not know why the wallaby cannot run away. Do they all live on the side of the road? I do not know about that. What was coming out of that is there are some issues we should be able to deal with at a departmental level, and there are some issues that should be dealt with at the EPA level that are significant.

Mr PURDON: Yes. This is an interesting point. It is a journey the EPA is going on now. We have found the environmental impact assessment process in the Territory has been the catch-all for everyone's issues for many years—for decades really. The EPA, which has come on board in 2013, has—particularly in the last few years under a new Chair—pushed the EIA process to be far more focused and to be only focused on those impacts that are potentially significant, and to try to resist the various forces that try to push the EIA process into dealing with dust and wallabies— if that is not a significant issue—and all the other insignificant issues that get pushed into the EIA process.

We are already moving that in that direction. The EPA is pushing us in that direction anyway, so you are focusing on what is significant. Your terms of reference for an assessment become more refined and the costs of gathering information et cetera go down and your assessment report is focused. That is what we would expect with this Bill as well.

Mr WOOD: Will that be legislated in the Bill? How will the EPA know that is what their duties are—to basically focus on …

Mr PURDON: The Bill, in its focus on potentially significant impacts, leads the EPA there.

Mr WOOD: Yes.

Mr FISHER: One of the key features of the Bill is this concept of the Territory environmental objectives, which the Minister will set, obviously on advice from the EPA and the department and broader consultation. That is really the mechanism for setting the range of issues and the thresholds, if you like, of significance for each of those issues.

The EPA does that at the moment through its own factors and objectives which it has come up with through its own process. The process for setting the Territory environmental objectives is specified in the legislation and is a way to actually formalise that process. The various factors the EPA must consider in its assessment and the level at which those are judged significant is clearly spelt out for everyone to see.

Mrs FINOCCHIARO: But that will be in the regulations?

Mr FISHER: The power to do that is established in the Bill. How that process works will be established in the regulations.

Mr WOOD: The classic example is when they first started, an EPA tried to stop a mango grower in the Howard River area from having his refrigerator motor making a lot of noise, which I would have thought was the department's job to say. But they went down and there was an inquiry into this one noisy compressor. That is why it is good to hear. Those issues, to me, should be departmental issues and the big issues we are dealing with need to be EPA's. That will, hopefully, reduce some of the time frame?

Mr PURDON: Yes, I would think so.

Mr PAECH: The Northern Land Council was here before you. I asked them a question about the general environmental duty. That has been removed from this legislation. In their submission, they made reference to Queensland and I think South Australia adopting approaches to have that in their legislation. They had advocated for it to be reinstated. Why was it retracted in the first place?

Ms DAVIS: To answer that, almost every jurisdiction in Australia will have a general environmental duty within their environment protection legislation. It is a standard tool. We looked at it carefully and included it in the consultation draft because it is a standard tool and it is really an underlying element of any piece of environment protection legislation. You have that duty that everybody has to comply with. Then you move up, depending on your level of environmental risk if you might need a licence or approval.

However, it was not 100% necessary as part of establishing an environmental impact assessment process or an environmental approval and it raised some concern during the public consultation process. The people thought that the Bill was expanding beyond, I guess, an impact assessment process.

So, we decided we would take it out because it could come in when we do further reforms to our environment protection legislation.

Mr PAECH: Sure. Following from that regarding further reform, it was mentioned today the process by which judicial component was in the original proposal, however, it is not now. There was general comments to the committee if that was to be considered at a later stage. That, alongside the triggers?

Mr WOOD: No, merits review.

Mr PAECH: No, no, there were two. We were asked about merits review by the Northern Land Council, but today it was also acknowledged that there were—I think it was Alex …

Mr WOOD: If the judicial is in there.

Mr PAECH: … if judicial process was in the original Bill proposal but not now.

Ms DAVIS: In the draft?

Mr PAECH: The draft, yes.

Mr WOOD: It is in there, the judicial.

Ms DAVIS: Okay. I might tackle merits review first to clear that off because I was here for the NLC question. The original consultation draft of the Bill contained juridical review and said that standing for judicial review would be open standing, meaning anybody could apply. It also contained merits review and it defined who could seek merits review, but that was a very broad group of the parties.

Both the juridical review and the merits review applied to the environmental approval issued by the Minister for Environment. Government decided to remove merits review from the Minister's decision and also to reduce the standing for judicial review back to the three parties that are identified in there now, which is your proponent, a person directly affected and a person who has made a genuine and valid submission during the environmental impact assessment process.

There is still merits review in the Bill, but that merits review relates strictly to decisions made by the Chief Executive Officer or an environmental officer and tend to be about enforcement and compliance processes. It might be if you have been issued with a notice, for example, or you have had a notice lodged against your title. Then, as the person directly affected by that notice, you can take a merits review of that action.

Mr PAECH: Great. I have two more questions. Is the committee going to continue on?

Mrs WORDEN: So, it is removed from around the Minister's decision-making because would that then be the Minister making a decision against her own decision? Is that the fundamental reason for that being removed?

Ms DAVIS: It is just …

Mrs WORDEN: You stated that the decision had been taken that it would not sit there anymore. Why is that?

Ms AVERY: Government made a decision to remove merits review from the Minister's decision-making. There are probably many and complex reasons for doing that. The decision of the Minister is informed by the expert advice of the EPA and the collective advice that has come from across government and community stakeholders who have all contributed to the process and fed into that.

The challenge for NTCAT to consider that view is that they would need to mount, basically, at least the same expertise to be able to gauge that view. That would become quite challenging.

It was a decision of government to remove merits review in relation to the Minister's decision.

Mr PAECH: Following on, I highlight two sections from a submitter we had this morning. The Environmental Defenders Office made reference to the financial provisions of Part 7 and expressed that they were disappointed that the provisions for financial assurances had been removed from the Bill, compared to the exhibition of the Bill. Why was that?

Ms AVERY: We removed that section primarily because it was not well understood at that point in time. Partly that may be because of terminology. As soon as we mentioned 'financial' people were concerned that it meant an impost on business.

What financial assurance actually was about was residual risk. When a project has concluded and the site has been remediated and rehabilitated, and the proponent is seeking their environmental bond back but they want to walk away from that site and have no further liability—effectively transfer liability to the Territory government—there may be a residual risk payment that is payable in that situation, perhaps to facilitate ongoing monitoring at the site or some such. It is something the Minister may apply in certain circumstances.

It is something that, increasingly, legislation in other jurisdictions and around the Western world is incorporating. It is something that, while it has a place in impact assessment because having knowledge of those process activities upfront is a useful thing, it is not imperative to the operation of a reformed environmental impact assessment and approval process.

Mr PAECH: Thank you, Ms Avery.

Mrs WORDEN: Could I ask a supplementary question on finance, or are you moving to another question?

Mr PAECH: Yes, go on then.

Mrs WORDEN: Sorry. The question was asked earlier and I thought it might be in the interest of clarity, but it may not sit with you guys anyway. If financial bonds are then taken under the new Act, is it proposed at all—from your knowledge—that the current 1% levy will be removed? Or does that sit with Mines?

Ms AVERY: The Bill is explicitly clear that if a bond or a levy is received in respect of similar environmental aspects through other legislation, then it is not required through this legislation. So, there is absolutely no double dipping or duplication in relation to that.

The concerns that were articulated this morning in relation to mining are unfounded. The Bill is completely explicit that it will not apply to those industries or operations that are liable under another piece of legislation.

Mrs FINOCCHIARO: Who determines if that environmental activity is the same, therefore they do not have to pay twice? If you have put your bond and whatever your other levy is, then who is making that decision under this legislation that the person or entity does not have to pay under this legislation because the reason for it is similar?

Ms AVERY: Basically, what we are talking about is primarily mining activity, so they are subject to the bond and the levy. They have a very sophisticated tool to calculate that in undertaking calculations for an environmental bond. We would be looking at a very similar tool, so the amounts that we arrived at would be fundamentally the same.

Because mining activities are liable under the *Mining Management Act* for that, we would not be able to impose a bond or levy in relation to the *Environment Protection Act* because the Bill is explicit that they cannot pay if they are liable under another piece of legislation.

Mr PURDON: If I could add to that …

Mrs FINOCCHIARO: It is that you used wording like if it is similar or something.

Mrs WORDEN: Where does it say that?

Mr PURDON: While we find out, if I could add to that?

Mrs FINOCCHIARO: Yes.

Mr PURDON: It would be a decision of the Minister whether or not to impose a bond. If she did impose a bond on a mine that already had a bond imposed on it under other legislation, that …

Mrs WORDEN: Oh, there it is. It is all right. 134(2).

Mr PURDON: ... decision would, by virtue of the way the Bill is drafted, would actually be invalid. It would be an illegal condition on an approval to require a bond that has been prohibited, basically. So, it would be open to challenge.

Mr PAECH: I want to pick up again from the Environmental Defenders Office this morning. Clause 315 deals with the consequential amendments to the *NTEPA Act.* It is not clear why this provision proposed repealing the obligation of the NTEPA to consider the principles of the ESD in performing its advisory functions. They have suggested that section 25AA(1) of the Act should be retained. It is not clear. For my benefit, could you clarify why that section was repealed.

Ms DAVIS: I can clarify. The section itself is not being repealed. What 315 actually says is, 'omit (1)'. All that section is doing is taking away the number, literally. That is because they are omitting the entirety of section 25AA(2).

Mr PAECH: Into the whole?

Ms DAVIS: Yes. Section 25AA(2) is the section that identifies the principles of ecologically sustainable development for the purposes of the *NTEPA Act*. We are omitting that so that those principles will actually point to this Bill and the EPA will not be looking at two separate types of drafting of principles.

Because section 25AA will then only have one subsection to it, it does not need the number (1).

Mr PAECH: Right.

Ms DAVIS: But the obligation of the EPA to still apply …

Mr PAECH: Is still intact.

Ms DAVIS: … is still intact.

Mr PAECH: Okay.

Mrs FINOCCHIARO: Is that the end of that, Chansey?

Mr PAECH: Yes.

Mrs FINOCCHIARO: I know the department published the draft regulations with the original draft of the Bill and for whatever reason it has decided not to go down that road, which has left a great amount of uncertainty. It is fair to say all the feedback we have received is that people—whether they are for or against this legislation—would have liked to see it. Why was the decision made this time around, given you did it at the start, not to include draft regs?

Ms TOWNSEND: We included draft regs where we could with the consultation Bill so people could see how the two parts fit together. But developing the draft regs now is dependent on developing and finalising the Bill …

Mrs FINOCCHIARO: But why? If you could do it before, why can you not do it now?

Ms TOWNSEND: We were doing it before as a consultation rather than a Bill that has been introduced into parliament. But we have been doing—and we have met with people. People who are sitting here have met with tens and tens of people and environment groups, industry groups and community groups to display exactly what will be contained in those regulations. That is also published on our website.

It is from that process that we have finessed things like time frames, how the tiers will work and how the consultation will apply. There is very explicit information in the public domain about how the regulations will actually work for the impact assessment process.

Mrs WORDEN: That leads to content. Maybe not the detail but the content.

Ms AVERY: There is a considerable amount of detail. There are time lines that identify the specific number of business days that apply to each segment of the different tiers of the impact assessment process. I think they are what Gerry was perhaps looking at earlier when he was calculating how many days different activities took.

There is also fact sheets that detail different aspect of the consultation processes that will apply in relation to elements such as the environmental objectives and so forth. There is actually considerable detail that is largely based on the previous regulations, plus the consultation that has occurred. Some of it is identified specifically in a fact sheet, then there is a mass of other information about the process generally, the time frames, flow charts and so forth that articulates all of that information.

Mrs LAMBLEY: There was criticism today that the impact statement process did not commence until the legislation was being consulted on—it was late in the day and it was fairly short. In fact, people complained that they felt they did not have time to properly contribute to that process. Can you comment on that please. What was the process? Why was it started well into the consultation process for the legislation?

Ms TOWNSEND: The very simple answer is you cannot undertake an impact assessment without having a fairly complete document or Bill in which to assess impacts.

Mrs LAMBLEY: The Bill was completed though, people said. It was well into the consultation process that you commenced the impact statement. Is that correct?

Ms TOWNSEND: I do not think that is particularly correct, but …

Mrs LAMBLEY: So when did you begin the process of the impact statement?

Mrs FINOCCHIARO: I think we were told earlier this year.

Ms TOWNSEND: My colleague is saying January.

Mrs FINOCCHIARO: That is what we were told, yes.

Mrs LAMBLEY: And the Bill was released for consultation when?

Ms TOWNSEND: Up until 7 December.

Mrs LAMBLEY: So, a month after or something? Yes.

Ms TOWNSEND: Three weeks after, including Christmas.

Mrs LAMBLEY: Right. And the consultation process for the impact statement—how long did that go for?

Ms AVERY: The consultation process was for slightly over eight weeks in total, so it ended up being about eight-and-a-half, nine weeks.

Mrs LAMBLEY: And in that time you were able to gather sufficient data to inform that process?

Ms AVERY: You are talking about the regulatory impact statement?

Mrs LAMBLEY: Yes.

Ms AVERY: The consultation process for that—just a moment. Yes, around six weeks was the consultation process in relation to that. A range of stakeholders were asked to provide some evidentiary material in relation to how much it cost for impact assessment and so forth.

Mrs LAMBLEY: I suppose the feedback we got today is from the mining industry. Some of the stakeholders said that the process was insufficient. Given that it impacts on them the most, they felt quite disgruntled by that, or unhappy with that. Did you receive feedback like that at the time?

Ms AVERY: We did not particularly receive feedback in relation to dissatisfaction with the time frame in relation to that. The reality is that we completed the regulatory impact statement in accordance with the NT's regulation-making framework. We collected data from as many different contributors as we could. Data was also used in relation to other jurisdictions. So, it was a comprehensive process completed in the time frame and in accordance with the regulation-making framework to deliver the outcome.

Ms TOWNSEND: Member for Araluen, I make the comment that the regulatory impact statement is one part of the process. The point I was trying to make in my opening statement is that we have had a long process of engagement on the development of the Bill, including releasing a draft Bill for consultation, which is not usual for us. That process started, I think in October, and we ran very detailed sessions—which we outsourced to specialist consultants so we were not involved.

Mrs LAMBLEY: There just was a lot of focus on the RIS today, as you would have heard.

Ms TOWNSEND: Yes.

Mrs LAMBLEY: That sparked our interest, across the panel here. Was it adequate? Did it allow people enough time on both sides of the industry affected by the issues to contribute to that process? The general feeling I got was that it was not long enough and that people did not feel they had a satisfactory opportunity generally to contribute.

Ms AVERY: It is also fair to say that mining was not the only industry that was consulted in relation to that.

Mrs LAMBLEY: But there are people from the environmental sectors that said the consultation process could have been longer. The chap from the land council said he would have liked longer consultation, I think.

Ms AVERY: Those consultation processes he was referring to were not in relation to the RIS.

Mrs LAMBLEY: Oh, right. I have taken that out of context.

One of the comments you made in your opening statement, Ms Townsend, was that the current legislation is outdated, ineffective and inefficient. Virtually the same words were used to describe how people felt dealing with your department—ineffective, inefficient, inconsistent and difficult to deal with. Will this legislation improve how your department runs? We just sit here and take it as it comes!

A witness: That it is impossible to run.

Ms TOWNSEND: Okay, thanks. I will invite people who live with this each day to jump in. It is probably a good opportunity to make sure we have properly responded to your first question, which was, 'Will this be better?'

If you look at the current impact assessment legislation, most of the concepts in it are defined by the NTEPA through policy. That has changed over time, so that introduces an element of certainty. There are, as Paul said, very few time frames in that process. Where an environment impact assessment is required, there is the opportunity to do a full EIS or what we call the PER, which stands for …

Mr PURDON: Public environment report.

Ms TOWNSEND: But, really, the public environment report processes are not any speedier than the full impact assessment legislation.

At the conclusion of that, the proponents and the community ends up with is a series of recommendations from the NTEPA which go to the Environment Minister and then are passed on to the Minister who will be responsible for approving that project, presuming there is one.

It is quite gappy, and is subject to the EPA and the way it is operating, through policy. The way the NTEPA is operating with its policy now is it is working very hard to streamline things. It does not have time frames or is not able to respond to projects in a way that is proportionate to risk.

But most concerning is there is no way for all of those inputs in the impact assessment process to be confident that they have actually landed somewhere in the final authorising approval. So, it is conceivable that a project that has significant environmental risks will have a range of recommendations made by the NTEPA in its assessment report that are not then translated into conditions. That is a concern for the community.

The new process will introduce much clearer information upfront about what will be required through the environmental objectives, and they will not be defined in policy by the NTEPA but set through a consultation process and the Minister.

There will be options for tiers of assessment. Where there is a project where the impact of that project is minimal and where there is a lot of information known, they may not need to do an impact assessment, or they may need to do a lower tier one, which would be much quicker. There are the time frames that we have talked about at length. The processes need to be looked at together.

When we have met with the tens and tens of people we have met with, we have been working through that diagram which is on the Internet and which I gave to the committee last time, which actually shows exactly how those three tiers and those decisions work.

What the Bill introduces that is new is greater input from the community to have a say—not to repeat what the NTEPA is doing and challenge every little thing, but to make sure the views of those community members are heard and to ensure that the current practice of the NTEPA in publishing all of its decisions is enshrined in legislation, because that apparently is not there now either.

So, the assertion that it will make things worse is hard to fathom. It is hard to grasp why people would think it would make it worse. When we have met with industry groups outside of this process, they have been quite pleased with the changes.

Mrs LAMBLEY: Will your department run more efficiently and effectively—as we were told today people have concerns about how the department processes these applications?

Ms TOWNSEND: A lot of the guidance in the Bill actually applies to the department and to the NTEPA, so yes, there will be accountability through time frames and through a much tighter process rather than policy that has developed over time.

Mrs LAMBLEY: And will you require more resources in order to implement the initiatives within this Bill?

Ms TOWNSEND: We will work with the resources we have, like all departments do. Again, having time frames and clearer KPIs about what we are required to do enshrined in law makes it a much easier argument for a Chief Executive Officer to make about why they may need more resources.

Mrs LAMBLEY: So, you may need more resources?

Ms TOWNSEND: We will be in a position to be much clearer about whether that is the case with this legislation.

Mr FISHER: From practical experience of reading a lot of EISs, they have become very bloated. The process has become unwieldy through this organic development that has not been sufficiently guided by the legislation because the legislation is 37 years old and it was written before people really had a very clear idea about how environmental impact assessments should be done.

Your typical EIS might be thousands of pages. They are often written as a catch-all to try to pick up every single issue and describe every feature of the environment. Most or a large proportion of that information is entirely unnecessary to the decision-making process and is a waste of the proponent's time and money in providing it and our time in having to read it.

The fundamental approach beyond the new legislation is a much better focus. Things like the Territory environmental objectives, the thresholds of significance and the different tiers of assessment actually allow an assessment to be focused on the key issues that are genuinely significant because we do not want to lose sight of the fact that many major developments could have potentially catastrophic impacts on the environment if they are not managed properly. There should be a robust impact assessment process but we need to focus it on those key issues.

For example, introducing the tiers of assessment allows for more flexibility for a more streamlined and rapid assessment for projects that have only one or two clearly defined areas of potentially significant impact and for spending a lot more time examining the very large projects that have many complex issues that need a lot of time and information to understand them. The time frames that we have structured for those different tiers actually reflect that, particularly giving a lot of attention to the terms of reference for an assessment, recognising that they are key to describing exactly what the proponent needs to do.

The intention is to give, in fact, more time to developing the terms of reference to make sure the proponent agrees with them and they cover off on the key issues, but also that they only focus on the areas of significance.

Those are some of the mechanisms where we are looking to make the process more efficient. It should allow us to deal with a number of projects more efficiently with the same amount of resources we have now.

Mr PURDON: Can I add to that as well? It is a question of a lot of interest to the department.

Sitting through some of those comments earlier today about the department and how it goes about its business was not easy for me. We are always trying to do the best we can within the legislation and the capacity we have. Regardless of whether we are working under the current Act or a new Act—if we achieve that—we will always do that. Hearing some comments about my staff and how we go about our business was difficult, but we are committed to providing the best service we can.

Regarding inconsistency, the Bill provides decision-making criteria or principles for approval decisions that currently do not exist. So, you would expect that with those decision-making principles needing to be considered, your decisions would become more consistent. If not, they would be very transparent. But they are not. They would build accountability for decision-making as a result of that.

In effectiveness, it is obviously very hard to say, prior to our Bill being passed and having some real data to demonstrate whether one Act is more effective than another. One of the things that Jo was talking about that is fundamental to this Bill is the direct line of sight that the environment assessment undertaken by the EPA has with the environmental approval. There is no 'lost in translation'. There is a direct line of sight that this is what the EPA recommended, and this is now what the Minister approved, agreed with or did not agree with.

The issue of an environmental approval within 30 days of the EPA providing its assessment report to the Minister and the investment that provides to industry should not be underplayed. The number of proponents

I have spoken to who have been out to market prior to having an approval who've said how hard it is to get investment in their project because they do not have any approval—versus one year later having a number of approvals in place and the stark difference that provides them, usually trying to get overseas investment. This will provide that right at the end of the assessment process, not waiting years until the approval comes through the system, which is what happens to many proposals now.

Mr WOOD: One question that has occurred to me is about Noonamah Ridge. The EPA did a report on Noonamah Ridge. The way I read it—and I stand to be corrected—is they simply looked at whether that town of probably 16 000 to 20 000 people would have an environmental effect. My understanding from the way you put it this afternoon is that the EPA can look at the social, cultural and economic effects. But I do not think they did that. They just simply made an approval that, from an environmental perspective, the Noonamah Ridge was okay. From that, the developers more or less said, 'Oh, good'.

Will it be the responsibility of the EPA to cover all those other areas which are a concern to the community down there, or are they able to confine themselves to just one part of a proposal? Are they bound to look at other things or can they just look at one part of it?

Mr PURDON: Where the EPA has determined that there is potentially significant impact in relation to a proposal—whether that is social, cultural, environmental or biophysical—then it is obliged to look at those impacts and to come to some conclusions about those. That is what the Bill would require of the EPA.

In the case of Noonamah Ridge, if the EPA thought there was some significant cultural impacts, potentially, it would be obliged to consider those and provide recommendations about them.

Mr WOOD: I will have to go back and see what they said now. The last thing for me. Have you considered a clause in the legislation which says, after two or three years the Minister will review the Act? This is a big Act. It is a lot bigger than the existing Act, which has been pointed out. Also, the department is saying it will be better. Does there need to be something there which, more or less, requires a review of the Act to see if it is up to what it is promoted to be? Some Acts do have that in them.

Ms TOWNSEND: Yes, we know, as we busily review them all. That would be a decision for government, not necessarily something …

Mr WOOD: Okay, that is all right. Thank you.

Ms AVERY: The other thing in relation to that is the time frame would be really critical if government determined that because, as we have already discussed, impact assessment can take varied periods of time and parts of that is because it is in the hands of the proponent. To acquire enough data and be able to give a reasonable review of the legislation might take some time.

Mr WOOD: Agreed. Yes, that is just a figure. A sensible time of review, yes.

Mrs FINOCCHIARO: A lot of the feedback we received is that, in substance, the Bill is not that different to the process now, except it is a lot more convoluted and a lot larger. You cannot dispute the fact that size-wise it is a lot bigger which means a lot more words, which means a lot more opportunity for interpretation issues. Why did it end up being so big compared to now? What …

Mr WOOD: More clauses.

Ms AVERY: First, I make the comment that some of the remarks that were made by some of the submitters today were interesting, from our perspective. On one hand they said the legislation does not provide certainty and that more needs to be in it, but at the same time, they moaned that it is 150 pages long.

The reality is when you want to bring certainty into a piece of legislation with time frames, process, ensuring that powers are appropriately constrained or that specific factors for decision-making are all identified clearly, that actually increases the size of the Bill.

The other thing to mention is that the legislation contains offences. There are different tiers of offences based on the amount of environmental damage or non-compliance. A sizeable portion of the legislation relates to those offences. One of the positions that came through very strongly in past reviews, in a discussion paper we put out and in relation to the consultation draft Bill is that there must be strong accountability structure for compliance and enforcement mechanisms and regulatory tools to ensure that people comply with their

obligations and requirements in environment protection—whether or not it is conditions on environmental approval or referring a proposal to the NTEPA for consideration.

Ms TOWNSEND: Can I say that in a shorter way? Some of the length comes from having to put in some of those criteria, new processes and heads of powers. But, essentially, as Karen said, the majority of the extra length, so to speak, comes from the offences and penalties. There is a specific way that offences and penalties have to be written that is long and repetitive but they are the rules.

Mrs FINOCCHIARO: You mentioned Ministerial power. Just about everyone was concerned by isolating that decision-making to the Minister. He or she will receive the NTEPA's report and then we have the one-month period in which they have to make their decision. Why did the department choose to create that structure rather than having a different structure where the Environment Minister is dealing with the environmental issues and someone else—be it the full Cabinet or the mines Minister, the waste Minister, or whatever it is—makes the ultimate decision?

Mr FISHER: It is a very sensible mechanism to have the Environment Minister giving environmental approval for a project and considering all of the factors that make up the potential environmental impacts and the conditions that should be associated with it.

One of the alternatives you suggested is what happens now. A decision about an approval for a project is made by the sectoral Minister who is responsible for that particular area. This discussion about time frames is interesting. What many people do not realise, or it has not been widely discussed is that at the moment the EPA makes an assessment report which is simply a recommendation. It goes to the Environment Minister who simply looks at it and then passes it on to the sectoral Minister.

That assessment report then basically disappears into a void, in many cases for years, before those projects are authorised. In fact, most of the major mining projects for the last …

Ms AVERY: Since 2017.

Mr FISHER: … 2017, so that is two-and-a-half years. They were assessed. They have all had their environmental assessment done and have had an assessment report produced—in some cases two-and-a-half years ago. None of them have received an authorisation from their sectoral Minister.

Additionally, what often happens when that appears, it is not at all clear how the conditions to protect the environment that were recommended by the EPA are enacted in that sectoral authorisation. There is a very long and grey period between the EPA's assessment and the final authorisation of that project compared to the proposal under the Bill where there will be a 30-day period between the EPA's assessment report and an environmental approval by the Environment Minister, which will very clearly spell out how all the conditions being recommended by the EPA are being acted on. It provides a lot of certainty to that project about its future with ongoing approvals.

Mrs FINOCCHIARO: But now the department of Environment will be undertaking all of that review enforcement …

Mr FISHER: Of the environmental conditions.

Mrs FINOCCHIARO: Yes.

Mr FISHER: Yes. The other thing to be clear on is that most projects also require other sorts of authorisations. A mining proposal will still require an authorisation under the *Mine Management Act* which specifies a lot of things about the non-environmental aspects of the management of that mine. It will still need those authorisations and they will still be scrutinised and regulated by the Mines department. Our department will look after the compliance with the environmental issues associated with the project.

Mr WOOD: While I have the chance, could I get a clarification? I will not tell you the exact issue I have …

Mr FISHER: We will try to guess.

Mr WOOD: It is one from the EPA and it is about a group of people who are in my electorate. The EPA has written to them saying, 'You have broken the environmental laws for two issues'. I have looked at that and written back.

The EPA has inspectors. The department has inspectors too? They do not? If there is a breach—this is where I get confused. Who runs the show when it comes to breaches of the environment—major breaches and minor breaches, put it that way?

Mr PURDON: It depends which Act you are talking about and which Act department officers are working under. The department and the division I head up adMinister the *Environmental Assessment Act*, which we are responsible to the EPA for and the *Waste Management and Pollution Control Act*.

If I am guessing right, the situation you are referring to sits under the *Waste Management and Pollution Control Act* and we report and act under delegation from the EPA. I am not responsible to Jo, as the Chief Executive, in any work I do under those two pieces of legislation. I am responsible and accountable to the Chair of the EPA and so are my staff.

Mr WOOD: So, you are working under two …

Mr PURDON: Yes, I wear two hats.

Mr WOOD: That is why I get confused as to who has control of what when it comes to environmental issues. Does that need to be better defined?

Mr PURDON: We have people confused about that—you are not alone. We need to do a better job of explaining how we operate under different legislation.

Mr WOOD: Okay.

Mr FISHER: I think, though, in this case you are referring to, it is almost certainly a matter under the *Waste Management and Pollution Control Act*. It is different to the issues that we are covering in this Bill …

Mr WOOD: That is true. Just knowing who has control of what. I am glad you got my email. I await your response.

Mrs LAMBLEY: One of the witnesses today said something I had not heard of before and some of us are in the same boat—that this was the first tranche of a two-part legislative reform of the environment policy. Is that correct?

Ms TOWNSEND: Yes. The government has made a number of commitments and described in their Healthy Environment, Strong Economy policy position that there will be improvements to the environmental impact assessment legislation, which is this Bill. They have also committed to an overhaul of the *Waste Management and Pollution Control Act*, which is the legislation that governs waste and pollution. A decision was made that in the future the environmental impacts of mining would be regulated by the Environment department rather than the Mines department.

At this point we are working on reforming environmental impact assessment, which is before us today. They are future commitments.

Mrs LAMBLEY: So, there could be, potentially, some amendments to this Bill as a result of the second tranche of these reforms coming through?

Ms TOWNSEND: No, not necessarily, unless we identify something constructively wrong. It is actually more likely that the waste management and pollution control aspects would come into this Bill and we would no longer have a separate *Waste Management and Pollution Control Act*—but not that we would change the impact assessment process—quite distinct.

Mr PURDON: If it turned out that the second stage of those reforms did not occur, this Bill as it stands and is being proposed would stand alone as an assessment and approval Act in its own right. It is not contingent upon future consultation and reform. If that happens, that will then fold in. That makes sense?

Mrs LAMBLEY: Okay.

Ms TOWNSEND: Which is why we got a question earlier about general environmental duty and why we decided and recommended to government that we make sure this Bill is very clearly focused on the impact assessment legislation so that it could stand alone. But in the future, with those other reforms, they could be incorporated at that time.

Mrs LAMBLEY: Why was it not all done together?

Ms AVERY: The reality is something we heard quite a lot today—and I think Neil van Drunen from AMEC said, 'We want it done tomorrow, but we also want it done in a consultative way'. The challenge for government in progressing that is that this is an enormous body of work and to do all of it in one tranche is just an enormous amount of uncertainty. It challenges industry and government to be able to do that. Breaking it into distinct parts that stand alone actually gives real focus and structure and enables us to consult with those directly impacted, rather than if we were doing everything it would be an enormous process of consultation that would just take such a long time.

Mrs LAMBLEY: Thank you.

Mrs FINOCCHIARO: I want to ask about triggers. This goes back to the regulations not being available. I know the department said it has its facts sheets and things, but at the very least, the department has to acknowledge everyone who has made a submission has taken some issue with the regs not being part of it. Fact sheets aside, it is obviously not resonating as it intended to.

Are the triggers set out in the fact sheet or is that still yet to be determined?

Ms AVERY: The Bill includes a power for the Minister to declare a referral trigger. Effectively, what that means is that if, potentially in the future, there is an industry with a location that is quite sensitive, and the Minister wants to ensure that any proposals in relation to that location or that activity are assessed, they can direct that that is a referral trigger and that any proponent who wishes to engage in that activity or in that location refers their project to the EPA. Then the EPA considers it in the context of whether or not there is significant impact. That is all it means. It provides a tool for government or the Minister in the future to identify something that is of particular concern, just to be sure that those projects are being referred. There is no specific trigger that has been identified at this point.

Mrs FINOCCHIARO: Sorry, are you talking about the additional powers to create these protection zones or are you talking about triggers to do the assessment?

Ms AVERY: Yes. What they provide is it may be that there is a specific area that is of such significance and concern—a very sensitive environment—that the Minister says, 'If a proponent wants to develop in that location, even if it is a small development, what they should do is refer the project to see whether or not it has potential for significant impact.' That would be, potentially, a trigger. A proponent would then refer their project. If that was to occur in that location the NTEPA would make an assessment about whether or not there is potential significant impact in the way they would any other project. It does not say that development or those activities cannot occur in that location, it is just a fast-track to get it into the assessment process to decide whether or not there is potential for significant impact.

Mrs FINOCCHIARO: People are asking whether it will be based on size, the cost of the project—at what point will there be that requirement to …

Ms AVERY: There is no proposal for any kind of triggers at the moment. Certainly, the triggers would not be based on the value or the size of a development. It may be in relation to a very specific aspect …

Mr FISHER: It is a way of allaying community concern and providing for government to have the ability to provide certainty to the community that certain sorts of actions will definitely be referred to the EPA. They will not rely on the self-assessment or calling-in process.

A really obvious example would be hydraulic fracturing, except now we have had an inquiry and there is another way of dealing with it. But with the trigger process government could have said, 'We have decided that hydraulic fracturing, as an action, is a referral trigger, therefore all developments that involve hydraulic fracturing must be referred to the EPA for assessment or consideration.

Mrs FINOCCHIARO: How will these areas be decided? They will be set out on a map somewhere to start with, or the Minister will just hear about a project and say, 'Oh, I do not like the location of that'?

Ms AVERY: Are you referring to the triggers or …

Mrs FINOCCHIARO: Yes, for the triggers.

Ms AVERY: That was just an example. We have just established the power for there to be location triggers. It would be a case of the regulations would set out the consultation process in the same way as it would establish its consultation for the Territory environmental objectives, where it would seek comment from the NTEPA, other government agencies and the community and look at the different options in relation to a proposed trigger. If it decided that there was a location trigger, then that could be defined in any manner of ways, but it would probably appear on a map somewhere so people had an understanding of that.

Mrs FINOCCHIARO: That would obviously extend the process. I am trying to think of how that would even come up in the first place. If it is not already a national park or some other significant land that is already earmarked through other various ways that can happen, how then does that crop up?

Ms AVERY: It would not come as part of the regular process. There would be an identified area that people would know about. Generally what occurs in relation to a proposal is a proponent does not usually come to the department or the NTEPA as their first port of call. They generally go to the relevant sectoral agency for the industry they are looking at developing.

That government agency would be aware of any potential triggers that might impact on their industry or their operations …

Mrs FINOCCHIARO: But who is setting that? That is what I am trying to get at. Where is the originator of the trigger?

Ms TOWNSEND: There is a persistent view that there will be this suite of triggers and that they all need to be set up before impact assessments can occur. It is more likely that there would be growing community concern about a particular thing or place being protected …

Mrs FINOCCHIARO: In response to the suggestion, though, that an activity will take place there?

Ms TOWNSEND: No. More likely to be there is a new industry that has significant concerns and they have expressed interest. Alaric has used the hydraulic fracturing example …

Mrs FINOCCHIARO: That is what I mean. There is a proponent interested in doing something and everyone goes, 'Oh, no, there is really special frogs that live there'. Then that triggers a new process.

Ms TOWNSEND: No. It is more that the legislation would give a power for a trigger based on location or to be established, with a particular process to get that trigger up in place. It is not a way to stop a project happening because there is not a trigger yet.

Ms AVERY: An example might be that a native animal that was thought to be extinct and they unexpectedly find a pocket where this animal now is identified as existing. You would want to preserve that area of habitat to ensure that this animal survives …

Mrs FINOCCHIARO: How do we learn about that? Go back one more step.

Ms AVERY: That information could come to us in …

Mrs FINOCCHIARO: So it could be separate to the process? You guys know …

Ms AVERY: It would be entirely separate from the process.

Mrs FINOCCHIARO: At Mitchell Creek there is a special wallaby and you guys just know that. Then someone comes along and wants to do something and you are, 'Hang on, we know about …

Ms AVERY: No, that is not how the process would work. If the information came to us that there was a particular aspect that needed extra special protection—it might come through Alaric's area through his officers undertaking some field work or someone else. They identify something that is of major concern or significance.

We are not talking about every day, as Jo said. There is not a list of triggers. There is nothing currently that people have identified as being a potential trigger.

That information comes to the agency. We would have experts who would look at that and say, 'Is it justified?' Perhaps a case would be put to the Minister. The Minister might say, 'In fact, that is a really critical aspect

that we need to ensure has adequate protection. Why do we not consult on that and see what other people think?'

If they subsequently discover, in fact, that is not the last known habitat of that creature—there are all these other areas. They are on a major comeback and they do not need that protection—they might say, 'Well, we will not issue a trigger.' Or they might alternatively say, 'There is enough evidence here to say that that is a worthwhile exercise.'

It does not stop development in that location …

Mrs FINOCCHIARO: You might not even have a proponent at that point?

Ms AVERY: Exactly right—unlikely to have a proponent. It is just that we are looking at protecting those significant elements from occurring.

Mrs FINOCCHIARO: I am wondering if it is an opportunity to run interference and delay. Obviously, you want to find something special about an area to delay a development. I was hoping that was not a mechanism for that.

Ms AVERY: No.

Mr WOOD: Can you find a rare species of frog at Noonamah Ridge?

Mrs FINOCCHIARO: Maybe you can, Gerry, I do not know.

Mr FISHER: Now you mention it …

Mr WOOD: Just to protect rural people.

Mrs FINOCCHIARO: Or a wallaby that likes dust.

Mr PAECH: But it is an allowance for the future. From what the Member for Spillett raised, I would be the same. The Central Land Council rangers group find a rare species of night parrot. While there is no activity going there, at some point in the future there might be and that would then trigger that site to undergo …

Mrs FINOCCHIARO: The assessment.

Mr PAECH: … the assessment.

Mr FISHER: Essentially, it is an extra safeguard built in to make sure the assessment process picks up on certain things that are really of very high concern for the community. It should anyway, but it is an additional safeguard to make sure that it does.

Madam CHAIR: Thank you very much for clarifying that point. I am mindful of the time. I will close off with one final question. If the legislation is enacted and the regulations are developed that Territorians will have the opportunity to provide input into those regulations?

Ms AVERY: Yes, it has always been our intention to do so—to consult on those regulations as soon as we are able to draft them.

Mr WOOD: Sorry, they still have to come through Standing Orders Committee?

Mrs FINOCCHIARO: Public Accounts.

Madam CHAIR: Public Accounts.

Mr WOOD: And if we wish them to go back to parliament they can be debated?

Madam CHAIR: Thank you very much. Ladies and gentlemen, that concludes our public hearing on the Environment Protection Bill 2019. I thank all representatives from the Department of Environment and Natural Resources for their time this afternoon.

I also acknowledge our committee staff, all those in attendance, especially those witness who gave testimony and bore with us during our random IT issues today. Thank you very much Hansard.

The committee concluded.
