



Northern Territory Environment Protection Authority Amendment Bill 2018: Social Policy Scrutiny Committee ALEC and ECNT Submission

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980. ALEC is regularly engaged with the work of the EPA through reviewing assessment reports and commenting on policy development.

The Environment Centre NT (ECNT) is the peak community sector environment organisation for the Top End of the Northern Territory, Australia raising awareness amongst community, government, business and industry about environmental issues and assisting people to reduce their environmental impact and supporting community members to participate in decision making processes and action.

ALEC and ECNT support reform of the Environmental Protection Authority. However, we consider that these reforms do not amount to any substantive improvement in the governance of the EPA and its ability to protect the environment of the NT. There is a crisis of confidence in the NT EPA due its perceived inability to enforce environmental regulation that prevents significant environmental impacts. The intended operation, scope and timing of these amendments are unclear.

Our key issues with the Bill in its current form include:

1. Prioritisation of economic values and imperatives at the expense of the core role of the EPA to protect the environment and people of the Northern Territory.
2. Uncertainty over the operation of the statement of intent in the absence of detail on the subsequent reforms to the environmental regulatory framework.
3. Lack of transparency and accountability on decision making processes: there is no serious attempt at refining the high level of discretion in decision making without introducing substantive decision-making criteria.

EPA Governance

The amendments to include and identify principles of ESD is supported. However, to ensure the principles are actively incorporated into decision making, the Minister must do more than *have regard* to ESD.

Section 15AA(1) should be amended to read that the Minister *integrate and apply* the principles of ecologically sustainable development.

In addition to the principles of ESD, the EPA should incorporate the waste hierarchy and best practice principles of product stewardship. This provision should be strengthened to ensure that the EPA applies ESD, especially the precautionary principle. Assessment report 84 for the Nolans Bore project effectively highlights the failure of the EPA to apply the precautionary principle:

“the NT EPA emphasizes that due to the lack of site-specific information (including baseline data), considerable uncertainty remains around the potential for significant environmental impacts over the life of the project.”

These reforms do appear directed at addressing this fundamental deficiency in EPA assessment process. The amendment should be revised to ensure that the EPA is able to apply ESD so that uncertainty is appropriately factored into an assessment process.

The introduced Part 3 powers enabling the EPA to give advice about emerging environmental issues is supported but there are no provisions which guide the direction of this advice. The amendments do not sufficiently define these new powers nor outline appropriate review mechanisms, as required by (4)(c)(A) of the Social Policy Scrutiny Committee Terms of Reference.

Membership criteria should be further refined to ensure that a qualified person possesses the requisite technical expertise and holds more than only industry experience in unconventional gas industries. Business and industry experience should not count as sufficient expertise to qualify for the role of an environmental regulator. The EPA is first and foremost an institution of environmental protection not a driver of economic development.

During the public briefing it was noted by the Department that they have difficulty in attracting expertise to the Board of the EPA. One of the difficulties being a high possibility of a conflict of interest because of the nature of projects occurring in the NT. The provisions in these amendments that protect the independence of the EPA are insufficient. Membership should include specific criteria prohibiting members who have links to specialised industries.

The provisions relating to membership should be further defined to ensure that any new members have a broad range of experience that is not restricted to the economics or technical issues of one industry.

Advisory role

A key weakness in the amendment is a lack of clarity on the definition of environmental outcomes, environmental quality and other key terms that will guide the exercise of the new advisory powers. While there is reference to environmental objectives, there is no clear guidance on how these are measured, defined or considered during an assessment.

Environmental and economic objectives may conflict when providing an advisory opinion or reviewing an environmental management plan. However, there is no guidance on how these factors are balanced or how to determine an appropriate outcome in the event of conflict. The EPA should not be tasked with delivering economic policy or economic objectives. The purpose of the EPA as expected by the public is to protect the environment through rigorous environmental assessment and oversight.

References to economic objectives should be removed from these amendments. Otherwise, the EPA will continue to be vulnerable to regulatory capture and be powerless to properly enforce a high standard of environmental protection.

There is limited scope for public participation to inform a determination by the EPA on an environmental issue. The Bill should be revised to strengthen the role of public engagement to inform the decisions of the EPA when determining an assessment report or providing an advisory opinion.

The EPA should be compelled to consider a request from an environmental organisations or other relevant stakeholder on undertaking a review on a matter of environmental significance for the Territory.

The broad drafting of environmental management systems is supported if it will be able to include any law, regulation or policy in the NT that has environmental implications.

The statement of intent is poorly defined. It is not clear how this statement is intended to operate and how it will strengthen the ability of the EPA to protect the environment and people of the NT.

Section 24A

It is difficult to comment on this provision without knowing the specific objectives that will be used to inform a decision. Environmental objectives should be informed by the need to undertake empirical environmental quality assessments and measured against key condition indicators.

if there is popular support for a report, the EPA could be compelled to investigate following a referral from a certain number.

Section 29A

The discretion of minister to reject advice of the EPA should only be permitted where there is a public interest in doing so. Reasons for the decision provisions are supported but this does not guarantee enough accountability.

If the minister decides not to follow this advice, there must be an overwhelming public interest test to fulfill, or rather balance of probabilities that it remains consistent with the functions of the Act, ESD and best practice management principles. These reports must be made publicly available. There should be an overarching presumption in favour of public disclosure unless there are justified ground for sensitive commercial information.

Regarding, subsection (3) on commercial in confidence. This should not be an unqualified exception. There needs to be a public interest qualification to commercial in confidence exception to public disclosure. Commercial in confidence should not be protected at the expense of the public interest in transparency when there are matters of human or environmental health at risk.

This is an instance of balancing private vs public interests and that decision should be guided by clear prescriptive criteria. The EPA should operate in the public interest to protect the publics interest in the environment rather than protecting the commercial interest of proponents.

29B

Regarding, any measure to *manage* the environmental impact of a development on the environment. Manage is a vague term that does not imply any particular outcome or process of value. The role of the EPA to mitigate, prevent and reduce impacts should be a key factor in reviewing, reporting and assessing management practices. Management is a neutral term that will not necessarily allow the EPA to provide for improved environmental outcomes.

29C

The matters for consider are vague and broad. This should be expanded to include the need to reduce impacts to as law as possible, having specific regard to the development in its regional context. This could include a specific reference to the need to assess the cumulative impact of a proposal or review.

29D

The EPA *must* make copies of the Advice available to the public in a way it considers appropriate: there should be a presumption of full public disclosure. Quality environmental protection rests on access to information and opportunities for public engagement that guarantee enough accountability and transparency.

31 (1)

This significantly tightens the offence provision by requiring a successful charge to prove state of mind of two persons involved. This would be very hard to prove and would therefore not act as an effective deterrent for people giving misleading or inaccurate information to the EPA. There should be a provision that requires all persons providing advice or material to the EPA to ensure that their information is accurate and reliable.

Conclusion

These reforms provide a level of procedural improvement to the governance and administration of the EPA, but they will not substantially improve the capability of the EPA to protect the environment and people of the NT from environmental harm. The intent of the amendments is not clear, and this is apparent in the ambiguous drafting of many of the key terms. It appears to empower the EPA to further economic objectives at the expense of environmental protection. This comes at the expense of the integrity of the EPA and the publics' faith in it as a strong environmental regulator.