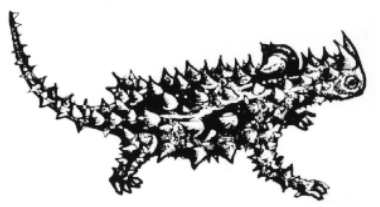
Arid Lands Environment Centre, Inc.



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Arid Lands Environment Centre submission on the DRAFT Environment Protection Bill and Regulations

The Arid Lands Environment Centre 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.

As the Northern Territory has the weakest environmental laws in Australia, ALEC has been advocating for reform of the entire environmental regulatory framework for many years. We welcome the release of the draft *Environment Protection Bill 2019* (the Bill).

The Bill represents a transformational shift in the quality of environmental governance for the Northern Territory through improved accountability, transparency and by embedding the principles of ecologically sustainable development (ESD). The introduction of an environmental approval and complementary powers of enforcement and compliance is a vast improvement on the current framework. This will hold proponents of an action accountable to their environmental, social and cultural responsibilities.

Key recommendations

1. That the Department is adequately resourced to deliver the improved compliance, monitoring and enforcement responsibilities under the Bill.
2. That the engagement and consultation provisions are revised so that they ensure effective engagement with affected remote and indigenous communities.
3. That the role of policies within the Bill should be clarified and further developed, to include the intent of their legal operation.
4. That compliance and enforcement are protected from being undermined through proponent interference and the use of exemptions.
5. That transitional provisions are clarified to ensure all projects are progressively incorporated so in a period of no more than two years, no projects are operating under the former framework.
6. That additional decision-making criteria are added to regulate the use of the exemption provision to maintain accountability and transparency.
7. That the environmental impact assessment, referral, approval and compliance procedures are amended so that a proponent is not granted greater influence than affected communities and relevant stakeholders.
8. That the approval time frames and deemed approval provisions are revised to ensure that decisions are made in the public interest and protected from undue interference by proponents.
9. That the Bill and Regulations are revised to ensure compliance with the government's commitments to the regulatory reform recommendations from the Hydraulic Fracturing Inquiry.
10. That public participation and intra-generational equity are added to the principles of ESD to complete the full articulation in line with national and international best practice.

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11. That merits review and open standing provisions are maintained as they as they were initially drafted.
12. That strategic assessment is amended to achieve strengthened assessment by incorporating cumulative bioregional criteria and that its "appropriate" use is clearly defined with additional decision-making criteria.
13. That fit and proper person tests and corporate liability provisions enable effective prosecution for offences and personal liability as provided by a chain of responsibility regulation.
14. That decision-making criteria are added to the Bill to guide the decision maker in determining the appropriate level of assessment to improve accountability and transparency.
15. That climate change is included in the Bill as an overarching principle for decision makers to consider when determining an environmental approval.
16. That environmental protection policies are strengthened with more detail, especially regarding protected areas and prohibited actions.
17. That form submissions are not discounted during an assessment or approval decision and that they are considered to provide an indication of public opposition/support for a proposal.

Strengthened environmental protection but framework prioritises proponent interests

- Overall support for the Bill but ALEC has concerns that there is too much discretion afforded to decision makers.
- Concern over provisions that allow a proponent to influence the assessment and approval process.

ALEC supports the structure of the Bill and Regulations as they significantly improve the effectiveness and enforceability of environmental regulations from; assessment, approval, policy, monitoring, compliance and public participation. Provided that the Bill in its current form is progressed with suggested revisions and amendments and the department is adequately resourced to implement the reforms; we consider that the framework will deliver improved environmental protection consistent with best practice across Australia.

However, notwithstanding the strengths of the Bill, the objectives of the reforms are undermined by a range of provisions that preserve a problematic level of discretion for decision makers and provides ample opportunity for proponents to influence the assessment, approval and post-approval processes. The purpose of these reforms should be to ensure decisions are made in the public interest and promote strong environmental protection. In their current form they outline a legal process for closed bilateral negotiation between proponents and the EPA during assessment and approval. This is the antithesis of transparent and accountable environmental assessment and approval.

The Bill and Regulations establish an assessment and approval framework that tips the balance in favour of economic development at the expense of the public interest. The assessment and approval process provides more opportunities for proponents to influence decisions than there are options for public participation.

Restricting review rights

It is important that we state from the outset that declaring changes to the Act before consultation has been completed undermines public confidence in the government's commitment to undertaking this reform democratically.

Capitulating to industry pressure and amending the Bill sends a strong message that industry has had more influence in the development of this policy, thereby urgently demonstrating the need for

this reform. This adds to our concerns that the assessment and approval provisions have been designed according to the interests of those who advocated for the narrowing of merits review and restricted standing.

It is important that the government demonstrate impartiality in this process and commits to progressing reform in the public interest in a properly transparent manner. We therefore reiterate our support of the drafting of merits and open standing provisions in the Bill and Regulations as they were initially drafted.

Supported provisions of the Bill

1. Improved accountability and transparency

We are encouraged by the government's commitment to introducing a modern system of environmental governance that embeds accountability, transparency and integrity in decision making and acknowledging the failures of the current structure.

The introduction of an environmental approval for all actions capable of having an environmental impact is a necessary and supported reform. Clearly delineating the departmental roles of technical regulation and industry promotion from environmental approval, assessment and monitoring is critical. Introducing decision making factors and criteria through triggers, objectives and values will be important in managing the role of discretion to ensure decisions are guided consistently by clear principles determined by public participation.

The Bill and Regulations provide a comprehensive framework that regulates all aspects of environmental governance enabling government to take a more proactive approach to environmental protection.

ALEC tentatively supports the Territory Environmental Objectives framework, including activity and impact triggers. We recognise the need for a mechanism that provides for a more consistent approach to regulating activities and ensuring comprehensive coverage. Developing an activity trigger will ensure that an issue can be consistently assessed and monitored across differing tenures, which is currently a significant challenge for environmental protection in the NT, especially the regulation of land clearing.

Ecologically sustainable development

Introducing the principles of ecologically sustainable developments in the Bill is a significant and necessary reform. ESD is a nebulous concept that is often considered in rhetoric but not effectively applied by decision makers. We therefore support provisions that require a decision maker to consider the principles of ESD and the role of the Bill in articulating the various principles.

However, ESD has not been completely articulated as it does not include explicit recognition of *public participation* and *intra-generational equity*. Public participation is a critical component of ESD that ensures that the public are able to engage and participate in decision making processes.[1]

Public participation should be inserted into **Part 2 Division 1** to comply with national and international conceptions of ESD. It is vital that people or communities who will be affected by a decision made under this Act have the opportunity to engage in the assessment process and help shape the outcome.

The principle of *intra-generational equity* should be added to Section 17 to introduce a duty for decision makers to consider how an action or activity will distribute benefits and burdens between current generations.

[1] <http://www.environment.gov.au/about-us/esd/publications/national-esd-strategy-part1#Principles>

Other than articulating the elements of ESD, the principles can only improve outcomes if decision makers are compelled to *apply or integrate* ESD rather than simply considering them. Amendments should be made to operationalise ESD by requiring decision makers to state how they have taken ESD into account. We therefore recommend amending **Section 14** to read:

> (2) A decision maker must *apply* these principles in making a decision under this Act.
> (3) In making a decision under this Act and stating the reasons for that decision, a decision-maker is required to specify how the decision-maker has *applied* these principles.

If these amendments are not made, ESD will remain unenforceable and will not necessarily lead to improved decision making consistent with the principles of ESD.

Provisions of the Bill that strengthen accountability and transparency and should be retained include:

- Fit and proper person tests in both the Regulations and Act.
- Accreditation standards and procedure for practitioners and auditors.
- Explicit powers for a decision maker to make a statement of unacceptable impact.
- Introduction of a general environmental duty to operate as a general deterrence against environmental harm.
- Regulations allowing EPA to require a proponent to obtain independent review of an assessment.
- Introduction of Environmental Protection Policies to guide the exercise of powers and responsibilities of the Department in promoting environmental protection.

2. Increased opportunities for consultation and engagement

We support the increased role of public consultation and opportunities for engagement during the assessment, approval and policy development processes. Requiring the minister to publish reasons for decisions is necessary to ensure that the public is informed and provides accountability in decision making.

Furthermore, we support the Regulations requiring the Minister to provide directions to where key documents and policies can be viewed. Access should be centralised and easily understood without requiring in-depth understanding of the website and the government Gazette procedure.

A significant strength of the Bill is in providing improved access to justice. This is done through public interest protections in undertakings as to costs and allowing modified costs orders in the event of public interest litigation. Access to the courts should not be restricted by any organisations' or individuals' economic capacity. These provisions are an important safeguard and must be retained. The framework could be improved by providing flexible guidance on the situations that could be considered to be in the "public interest".

3. Enforcement mechanisms

Enforcement is one of the most critical failures of the current environmental framework. Government and the community more broadly are not empowered to take effective action against an activity that is causing environmental harm because the current legal framework does not provide effective and accessible enforcement mechanisms.

The Bill is a distinct improvement on the current situation by outlining a comprehensive range of civil remedies that are accessible to affected persons and relevant stakeholders. These provisions should be retained.

Additional powers introduced through the Bill such as stop works orders, call in notices and show cause events are all supported by enforcement powers. These are necessary to support the shift in

legal culture in the Territory as business and industry become accustomed to operating under higher standards of environmental protection.

Provisions that need to be revised

1. Public Participation and engagement

A key deficiency in the Bill and Regulations is the lack of detail on facilitating engagement and participation in environmental decisions for remote and indigenous communities. This has been acknowledged as a specific weakness in the framework.

The Bill should be amended to facilitate more flexible consultation and submission processes. Rather than relying on narrowly prescribed timelines for engagement, the Act should require a decision maker or proponent to demonstrate there has been adequate engagement and opportunities to participate in the assessment process during the preliminary stages of an activity. A proponent or decision maker should demonstrate adequate engagement has occurred rather than simply complying with the submission timeframe.

We support the regulations providing for oral submissions. This is an example of a more flexible approach to engagement where conventional submission methods are often inappropriate. EIS documents are a complex undertaking for organisations, let alone individuals who are not experienced in the assessment process or environmental issues or for whom English is not the primary language.

The Bill should require proponents to provide information sessions and project summaries in a culturally appropriate way, utilising independent interpreters if necessary. Public engagement in urban settings is a radically different context than in remote communities.

Underpinning this issue is an acknowledgement that Australia has obligations under international law to consult with affected communities to ensure that indigenous people can determine and develop strategies about activities that affect them and their land.[2] The Bill must be revised to ensure compliance with our international obligations.

Recognition of indigenous interests and ensuring proper engagement could be achieved through:

- Requiring public consultation, such as forums, to provide information directly relevant to the environmental issues of the assessment.
- Including a charter of consultation within the regulations that outlines a checklist to demonstrate an ongoing process of engagement.
- Including free prior and informed consent as a factor to be considered when evaluating the impact of a project.
- Adding additional factors in the assessment and approval process that require a decision maker to consider whether affected persons have been appropriately consulted and understand the scale and impact of a proposal.
- Including a requirement to consult using culturally appropriate methods.
- Accepting valid and genuine submissions from remote communities or, communities where English is not the first spoken language, in alternative forms.

2. Transitional arrangements

The lack of certainty around the transitioning of current proposals into the new framework is critical. We consider this issue to be one of the greatest risks in the drafting of the Bill and Regulations. Communities in central Australia are expecting the new framework to address the failings of the former system, and regulate projects currently progressing through assessment.

[2] United Nations Declaration on the Rights of Indigenous Peoples: articles 19 & 32 (2).

While it is understood that the intention is to develop a policy on this topic and transition projects at the first decision point from the commencement of the Act, there needs to be more certainty on the type of decisions leading to incorporation into the Act, and a guarantee that all projects will be transitioned within a reasonable time. Transitional arrangements should be clarified in the Bill as well as the regulations rather than relying on unenforceable policy.

Transitional arrangements should be:

- Clarified as a matter of urgency to provide certainty and confidence to central Australian communities affected by current mining proposals.
- Enforced through the Act rather than Regulations and policy.
- Amended to provide an enforceable deadline so all current proposals and assessments are transitioned into the new framework.

3. Draft and deemed approvals

- ALEC opposes provisions that deem an approval to have been granted if a prescribed timeframe is exceeded.
- ALEC opposes sections that provide a proponent the opportunity to influence the assessment and decision process at the expense of public participation.

Deemed approval and draft approval provisions undermine the role of the EPA as an independent authority and provides opportunity for a proponent to influence the assessment process to their advantage. The provisions allowing a proponent to be consulted on draft approvals, assessment decisions and inviting them to make a submission renders the assessment process vulnerable to perceptions of conflict of interest and undue influence over regulation.

These provisions undermine integrity in the assessment process and dilutes the essential purpose of the reform. It creates a formal imbalance between the rights of a proponent and the ability of the affected communities and relevant stakeholders to be involved in decisions that impact them, contrary to the principles of best practice ESD. Consultation on draft approvals by a proponent could create an expectation by proponents that their interests are more valued in the approval process than affected communities.

In our opinion the Ministerial timeframes for a decision under the Act are too restrictive and unrealistic. As it currently stands there are EPA assessment reports that have not yet resulted in an approval and variations have been lodged; over periods of time much longer than those being anticipated in the draft Act. ALEC does not consider it desirable nor appropriate that a decision of the EPA is taken to be accepted by the Minister if they have not decided in the required time (**Section 88**).

Forcing a decision should not be permitted when there may be complex or contentious proposals that require a more thorough assessment. The timeframes should be extended to be achievable and realistic rather than appearing to deliver industries request for “certainty” and the need to expedite development, thereby reducing the thoroughness of an approval process.

There are ample opportunities in the Act for a proponent to influence assessment and approval decisions; this is effectively permitting industry to regulate themselves. The design of these provisions elevates proponent interests at the expense of opportunities for affected persons to be engaged. These sections should be significantly revised to reduce the potential for conflict of interest and at the least grant equal opportunity to affected communities and stakeholders to participate.

4. Decision making criteria and use of discretion

Multiple sections of the Bill need to be strengthened by inserting additional decision-making criteria to narrow the use of discretionary decision-making. This is a key objective of the reform process to deliver more accountable and transparent environmental decision making.
Certain key operational terms need to be further defined in the Act to reduce the role of subjective decision making. These include the definition of "significant impact", "unacceptable impact" and the process of determining the appropriate level of assessment. We also suggest introducing stronger processes around the EPA's recommendation to ensure that the Minister will make a decision on an approval or statement of unacceptable impact that is in the public interest.

Ultimately, the Act and regulations are attempting to strike a balance between discretion and duty: from our reading of the draft framework this balance is tipped in favour of proponents. It maintains disproportionate opportunities for discretionary decision making. There are several discretions in the Act which could become a duty.

5. Unconventional petroleum regulation and recommendations from the Fracking Final Report

The Bill and Regulations should be revised to ensure consistency with the intent and requirements of the regulatory reform recommendations of the Final Report from the Scientific Inquiry into Hydraulic Fracturing.

The offence provisions of the Act provide broad defenses through due diligence and "reasonable steps". These key terms have not been defined and are therefore capable of being broadly interpreted so that a successful prosecution could be difficult. Broad defence provisions are inconsistent with **Recommendation 14.32 (**Final Report from the Scientific Inquiry into Hydraulic Fracturing**)**, which requires a proponent to prove they were not responsible for the harm rather than merely establishing due diligence or that they took reasonable steps.[3] Offence provisions in the Bill are of a lower standard of liability than that committed to as part of unconventional petroleum reform in the recommendations which assume liability for harm unless proven otherwise.

As this Bill will provide for an assessment and approval process for unconventional petroleum development, decisions made under this Act must be consistent with **Recommendation 14.11**. The ESD provisions of the Act should be revised to be consistent with **Recommendation 14.11** and require a decision maker to *apply* the principles of ESD.

The extensive and thorough consultation undertaken during the Scientific Inquiry into Hydraulic Fracturing produced a valuable body of information that should be used to guide the operation of the Act and Regulations.

There is widespread community concern that this Bill and Regulations will not apply from the outset to all subsequent unconventional petroleum exploration and production. Ongoing consultation on this reform should guarantee complete coverage of this Bill and its application to all industrial activities, including unconventional petroleum development. The Act should not commence until there is certainty that it will regulate unconventional petroleum development.

ALEC has previously advocated to the Department of Environment Natural Resources that the regulatory reform process should incorporated the recommendations from the Fracking Final Report, and continues to support this recommendation.

6. Exemptions to the Act

The power to make a regulation exempting a person from compliance with the Bill or sections of the Bill through **Section 267 (f)** could completely undermine the operation of the Act and its ability to provide consistent enforcement and compliance.

[3] The Act at section 33 and other offence provisions.

We cannot anticipate a situation where this provision could be used in the public interest or produce an outcome that will improve environmental protection. We strongly urge that this provision is removed. In the alternative, the section should only be used if it meets a public interest test and requires the Minister to publish reasons for exempting a person from the Act.

7. Environmental assessment process in the regulations

- The environmental impact assessment process should be outlined in the Act to provide appropriate legal weight to departmental roles, responsibilities and powers.

A key weakness of this reform is the disjoint between the Bill and the Regulations and the disproportionate role of the Regulations in prescribing standards and procedures of environmental assessment. The key risk here is that the regulatory authority of the assessment process is weakened by placing most of the material in the regulations, exposing the process to political opportunism, immune from democratic oversight.

While we understand the Departments' interest in maintaining flexibility, we submit that the balance between the Act and Regulations has been tipped in favour of prescription in the regulations. We advocate for strengthening the Bill by prescribing key elements of the assessment procedure. This should include clearly articulating criteria to guide the process of determining the appropriate type of assessment.

There appears to be a significant level of detail missing from the Regulations. Sections of the Bill state that more information is prescribed in the Regulations, but this is not readily apparent. At various sections throughout the Bill, reference is made to the Regulations, but it is not easy to find the corresponding Regulation. There appears to be a disjoint between the headings and sections of the Bill and the structure of the Regulations. This should be standardised to provide consistency and ensure the framework is more easily understood, thereby promoting compliance.

8. Strategic assessment

The provisions relating to strategic assessment in the Bill and Regulations are uncertain and vague. The intended role or operation of strategic assessment has not been articulated by the department at any time during the reform and consultation process to date yet it is intended to be utilised in the assessment process. Without regulatory guidance on the operation of strategic assessment, it is difficult to comment on its place in the subsequent regulatory framework.

Strategic assessment can deliver improved environmental outcomes or alternatively it could diminish the quality and rigor of environmental assessment in order to expedite development. The objective of strategic assessment is not clear in the Bill. The Bill and Regulations should be amended to include additional criteria to ensure that strategic assessment will incorporate bio-regional data so that cumulative impacts can be incorporated into the assessment and approval processes.

The operation of strategic assessment should by clarified by adding decision-making criteria to ensure the EPA is able to determine when strategic assessment is considered "appropriate". The EPA alone should have the power to determine the appropriateness of strategic assessment rather than the proponent. At the least, a complementary policy document should be developed that guides the operation of strategic assessment.

Provisions concerning strategic assessment should be amended:

- Remove the ability of a proponent to refer (**S. 64**) to have a proposal assessed by a strategic assessment, the government alone should determine the appropriateness of strategic assessment.

- Qualify the use of strategic assessment in the Bill and Regulations by defining the circumstances in which it would be "appropriate" and in the public interest. In the absence of compelling public interest factors, there should be a presumption against strategic assessment.

Conclusion

The complete overhaul of the Northern Territory environmental regulatory framework is necessary to provide proper environmental governance and the Bill and Regulations are a significant improvement by providing that structural reform. The foundation and intent of the Bill and Regulations are supported for they provide for a drastic improvement in the level of accountability and transparency in environmental governance through improved assessment, approval, compliance and enforcement provisions. ALEC appreciates that this is part of a significant reform agenda, transitioning the NT into a modern paradigm of environmental protection.

Nonetheless, the Act and Regulations should be significantly revised in particular sections to properly deliver on the intent of reform and restore public confidence. The environmental assessment and approval processes are drafted in a way that appeases the economic interests of proponents at the expense of public participation.

There is a high level of discretion retained in the Act through a lack of definitional clarity for key operational terms. These should be rectified in order to assure the broader community that these reforms will provide environmental protection and deliver ecologically sustainable development. Furthermore, there are critical questions remaining about the operation of the Act, including land-clearing, transitional arrangements and unconventional petroleum regulation. This uncertainty should be addressed in the act, not through policy and guidelines.

We therefore urge restraint in expediating these reforms whilst key executive decisions on unconventional petroleum, transitional arrangements and land clearing are still being made. This reform must deliver a framework that is capable of addressing the emerging challenges of the 21st century and provide an effective long-term framework for improved environmental protection across future generations.

Comments on specific sections

Section/Principle	Comments and improvements
8, 10	- Defining significant environmental harm and impact should not only be a financial exercise. The intrinsic value of a system or region can be harmed regardless of the cost of remediating that harm. - Recognise that there is value in environmental systems that cannot be fully accounted for through financial methods. Some impacts can simply not be remediated eg: PFAS contamination. The potential for remediation does not justify an impact. - Further qualify this definition to ensure consistency in EPA assessment report decisions.
57: Due Diligence	- Define what constitutes behavior of due diligence, how will this be monitored. - If it is to be utilised as a broad defence, due diligence should be defined.

ESD in decision making	- ALEC strongly supports the inclusion and articulation of the ESD principles. However, need to insert the principle of *public participation* to capture ESD in its entirety. ESD is weakened without a guarantee of public participation. ESD provisions should require decision makers to *apply* ESD and outline how this has been considered in the reasons for a decision. - Requiring decision makers to *apply* ESD will be necessary to ensure all unconventional petroleum environmental decisions are made consistent with recommendation 14.11 of the Fracking Final Report. - Extend section 17 to include *intra-generational equity:* this could provide for equity considerations between current generations.
Division 2	- Overall ALEC supports the process and detail of management hierarchies. Could be strengthened by adding principle of restoration, maintenance and enhancement of environmental value. - Decision makers should be compelled to consider the potential for an activity or proposal to enhance environmental quality.
43	- Supports the Minister having power to review objectives and triggers. Could be improved by adding criteria for reviewing these objectives; principle of non-regression: a review cannot lead to a weakened level of environmental protection.
48	- Concerns that the mental element of the offence is too stringent. Intention could be difficult to establish; consider including reckless or negligent actions. - Also, at subsection (3) Minister *should* have regard to territory objectives rather than *may*.
49	- Introduce a provision that states the intention of an environmental protection area. Make it clear that any person can apply to have an area declared, but ultimately at the discretion of the Minister.
58	- Again, intention is a stringent mental element that could be difficult to prosecute, suggest including reckless or negligent conduct, which is a reality of environmental offences.
59	- Support this section and the factors to be taken into account, consider including additional factors that could consider the capacity of a project to enhance or restore environmental quality through restoration or rehabilitation. - Expand (a) to read that the purpose is also to prevent development that has an unacceptable impact.
60	- Add additional safeguards to ensure a bilateral agreement will not dilute the level of assessment or investigation undertaken for any project. - Territory assessment should not substitute assessments that are more appropriately undertaken by the Commonwealth.
82	- Need to further define what an unacceptable impact is; having regard to information gathered from consultation with affected communities, impact on future generations, climate change etc. - Without a definition of "unacceptable" there is a disproportionate level of discretion afforded to the decision maker.
84	- Add requirement that EPA must publish notification that they have received an application to vary an action. - Important that the public is involved in the process of modifying a proposal and can participate in the subsequent assessment and approval process, especially if they are in an affected community or have made a submission.
87	- Insert additional decision-making factors, having regard to whether an action is in the public interest and ensuring that the decision outlines how factors have been considered. - Question how the Minister will decide if an action is *acceptable* and how residual impacts could be *appropriately* offset. These are key operational

	terms that could be defined in a policy document or complementary guidelines.
92	- Qualify the situation in which the Minister can reject a statement of unacceptable impact from the EPA. ALEC supports stating reasons for the decision, but Minister should have regard to specific factors in determining whether to reject that statement. - For example, the Minister should be required to consider whether rejecting the statement of unacceptable impact is in the public interest and supported by independent expert advice.
93 (4)	- Statement of reasons and approval could also be sent to relevant stakeholders, especially organisations or communities either affected by a proposal or involved in the assessment through having made a submission.
97	- ALEC supports this provision, could be strengthened by making it clear that an approval could be revoked if a proponent fails to establish on-going compliance.
Part 8, Offsets	- Minister should also be able to publish guidelines that clarify circumstances, impacts or actions that are unable to be properly managed using offsets. - This would support the operation of the environmental protection hierarchy that ensures offsets are used as a mechanism of last resort and do not permit actions that are otherwise unacceptable.
127	- The regulations are not clear on who is liable to pay a protection levy and in what circumstances. Are the regulations yet to outline this liability? - An environmental protection levy should account for the cost of emitting carbon pollution as well as a calculation on the cost of ecosystems goods and services impacted by an action or development.
201	- A proponent should have to justify why they are withdrawing an enforceable undertaking and outline how they have considered prescribed criteria that ensure withdrawing the undertaking will not have a material impact on the level of harm.
217	- ALEC supports providing open access to injunctions. Strengthen this provision to provide that anyone can apply for an injunction to prevent an *apprehended* breach of the Act.
Regulations	
4 (5)	- Add provision that states: the major environmental legislation from that state so that if laws change in other jurisdictions it is still considered in the Regulations.
21	- Qualify this by stating criteria for determining when a strategic assessment is "appropriate"
22 (4)	- Again, guidance is needed on when a strategic assessment is not "appropriate".
29 (1)	- ALEC has concerns over duty to consult with the proponent. This could create an unreasonable expectation for the proponent to influence the level of assessment. - Exposes the assessment decision to undue influence from the proponent. - Make this a discretion or at the least add a requirement for the Minister to also consult affected persons/communities and relevant stakeholders, ie submitters.
29 (3)	- ALEC has concerns again that this creates an opportunity for the proponent to influence the decision-making process and creates a conflict of interest.
36 (2)	- Consider extending the timeframe beyond 12 months; communities will need certainty that if a project is unacceptable, it will not be proposed again until a long period of time has lapsed.

	- Avoid a situation where there is over engagement, extensive consultation and interference in a region.
44 (2)	- What circumstances would it be desirable for the proponent to provide the EPA with a draft terms of reference; ALEC has concerns again that proponent will have too much influence over the scope and rigour of assessment in designing their own TOR.
47 (2)	- Include provision that allows EPA to consider the quantity of submission received as an indication of the level of public interest, contention or overall support/opposition to a proposal. - Form letters are valuable in terms of indicating the level of public interest in an activity.
66 (5)	- Another opportunity for the proponent to influence assessment process. EPA should still be required to prepare a draft TOR for an assessment.
68 (3)	- Consider providing option to extend submission period if particularly contentious, high public interest or located in a remote or very remote region mostly impacting remote communities.
91 (5)	- ALEC supports submission being made orally; consider also adding that submissions could be made through informal community meetings or on country meetings to provide context specific and culturally appropriate opportunities for engagement.
100 (1)	- ALEC strongly opposes; should be revoked. Proponent should not be given a right to request less rigorous assessment, especially if public submissions have been made seeking additional information.
107 (2)	- Qualify this to ensure that the panel is impartial and independent: any person appointed must be independent from the industry or activity in question.
108 (c)	- Add that panel should require that no misleading information is given to ensure evidence is accurate and truthful.
108 (3)	- ALEC has concerns over private inquiries; undermines the purpose of assessment by inquiry. Only in truly exceptional circumstances, at the request of a community should they be private.
112	- Proponent must *incorporate/include/apply* the findings and outcomes from the report.
113 (3)	- The purpose of the assessment report should also be to identify unacceptable impacts.
117 (2)	- ALEC has concerns that this provides an opportunity for the proponent to influence the scope of the approval and operating conditions. - If the proponent is given an opportunity to comment on the draft approval other relevant stakeholders should also be afforded that right including; affected persons/communities, people who have made submissions and relevant government departments. - Creates an imbalance between the rights of the proponent against the broader public and therefore environment.
166 (2)	- Same concern as above. While we recognise this is informally happening, a formal recognition in law could provide an unreasonable expectation by proponents to influence the process and undermines the opportunity for public participation. - Remove this section or otherwise allow affected communities and relevant stakeholders the opportunity to comment on a draft approval during a variation.