



Northern Territory Environment Protection Authority (NT EPA)
c/ Environmental Assessment Unit
GPO Box 3675
Darwin NT 0801

Mode of delivery
Email to: nTEPA.consult@nt.gov.au

Dear Environmental Assessment Unit,

Re: Implementation of the Environment Protection Act 2019 – Comments on Draft guidance documents

The Environment Centre NT (ECNT) is the peak community sector environment organisation in the Northern Territory, raising awareness amongst the community, government, business and industry about environmental issues and assisting people to reduce their environmental impact. We support community members to participate in decision making processes and action. ECNT welcomes the opportunity to comment on draft guidance documents: *NT EPA Environmental factors and objectives* and *Referring a proposed action to the NT EPA*.

ECNT has called for major environmental regulatory reform for many years and welcomes the core reforms in the Environment Protection Act (EP Act) and its planned commencement on the 28th June 2020. We provide the following comments on the documents from the perspective of an organisation likely to be making comments on referral documents and assisting the community to also do so. One of the NT Government's stated purposes in undertaking environmental regulatory reform is to increase public trust in the Northern Territory's environmental protection regime. For trust to be merited, the application of the EP Act must be robust, transparent and consistent and these guidance documents are an important part of the implementation of the EP Act. We support the submission from the Environmental Defenders Office (EDO) on the guidance documents and note their expertise and priority in ensuring they are consistent with the EP Act.

NT EPA Environmental factors and objectives - Environmental impact assessment guidance

We note that under Section 28 of the EP Act the Environment Minister can declare environmental objectives for the Act. In publishing the NT EPA environmental factors and objectives, it is unclear as to whether this is interim guidance, with an intention for the Environment Minister to declare environmental objectives at a later date. We strongly recommended that work be undertaken for Environmental Objectives to be declared and be made binding under the EP Act.

In regards to the specific factors and objectives ECNT notes that the NT EPA does not include thresholds based upon area. For example, under the Land Clearing Guidelines (Feb 2019), it is recommended that referral to the NT EPA occur for applications over 5000 hectares. It is in line with the mandatory test of 'significant impact' that the factors and objectives do not limit referral based on simple thresholds such as area of land proposed for modification.

We note that the more detailed reference to 'environmental factors, objectives and indicative environmental values and sensitivities potentially relevant to the proposed action' are detailed in Appendix A: pre-referral checklist - table 1 of the *'Referring a proposed action to the NT EPA'* document. We suggest that providing this detail also in the specific *NT EPA Environmental factors and objectives* guidance would provide greater clarity and direction on the factors and objectives. We will provide our comments on the specific factors and objectives below.

Referring a proposed action to the NT EPA - Environmental impact assessment guidance for proponents

Referral

We support the reference to 'engagement with potentially impacted or interested members of the NT community' during formulation of the proposed action. In reading this document our emphasis is on ensuring as much information as possible is provided in the referral document. We note on page 5 the reference to the NT EPA requesting further information from the proponent, 'if that information is necessary to inform its consideration of the referral'. As there may be proposed actions that are approved based only on the referral information, it is imperative as much information as possible be provided at the time the referral is placed on public exhibition for comment. We note that under section 44 of the Draft Environment Protection Regulations 2019, the NT EPA may request additional information during assessment process. We also note that under section 46 (b) 'if the NT EPA considers it appropriate, invite interested persons to make a submission to the NT EPA in relation to them within the period specified in the notice'. It is unclear on what basis the NT EPA will consider it 'appropriate' to seek comments on additional information received after the first public exhibition of the referral thus it must be very clear in these guidance documents that as much information as possible on the potential impact of a proposed action is provided up front. We assert that the opening comments on 'minimum information requirements' must be greater than simply to "ensure the information provided is sufficient to inform the NT EPA's decision on whether the referral should be accepted and whether or not to assess the proposed action". The referral information at the 'public exhibition' point must enable the public to assess any potential significant impact, determine how the environmental decision making hierarchy has been applied, details of alternatives and the likely impact on environmental factors.

We question whether the design of the 'APPENDIX B: Form for the referral of a proposed action or strategic proposal to the NT EPA' will elicit the detail required to provide an informed view of the referral. We suggest replacing the 'small text box content option' with a list of the information that must be provided in attachments. The EDO submission provides further detail on how the referral form can be redesigned and we support their suggestions.

Confidentiality

The reference to the request for confidentiality at page 7 and the simple check box on the 'form for referral' for information to remain confidential, does not communicate the limited conditions on why information should be confidential. It must be made explicit that only information listed at section 281(2) of the EP Act may remain confidential.

APPENDIX A: Pre-Referral Checklist

In reference to the theme of Land: - Terrestrial Ecosystems; the indicative environmental value and sensitivity "locally endemic species or species with restricted habitat" must adequately encompass "range restricted taxa" or "short range species". We note that 'data deficient' species are not recognised and are concerned that the impact on important biodiversity values necessary for ecosystem functionality will not be adequately recognised and assessed.

We support the specific comments on objectives provided in the EDO submission, particularly in relation to the objective of reducing GHG Emissions and the inclusion of scope 3 emissions.

Thank for the opportunity to comment on the documents related to the implementation of the Environment Protection Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shar Molloy', with a large, stylized flourish at the end.

Shar Molloy
Director
Environment Centre NT