

Consultation Draft Chain of Responsibility Laws

Introduction

The Department of Environment, Parks and Water Security (DEPWS) is undertaking the environmental regulatory reform program as part of the Northern Territory (NT) Government's commitment to modernise the Northern Territory's (the Territory) environmental protection and management laws¹.

In April 2018, the NT Government accepted all of the recommendations of the [Scientific Inquiry into Hydraulic Fracturing in the Northern Territory](#) (the Inquiry), including recommendation 14.30 to introduce environmental 'chain of responsibility' (COR) laws as part of improving the regulatory system for managing onshore petroleum activities. Recommendation 14.30 states:

That prior to the grant of any further production approvals, the Government enacts provisions establishing a chain of responsibility for gas companies and related parties to ensure compliance with environmental obligations.

A consultation draft of the *Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022* (draft Bill) has been released. The draft Bill details proposed amendments to the [Environment Protection Act 2019](#) (EP Act) and [Environment Protection Regulations 2020](#) (EP Regulations) to incorporate COR laws into the Territory's environmental regulatory framework.

Preparation and release of the consultation draft Bill follows previous engagement activities undertaken on environmental COR laws for the Territory. The legislative framework as detailed within the draft Bill is based on the framework outlined in the [COR Laws Information Paper](#) that was released for public consultation in July 2021. The legislative framework proposed has been informed by similar laws adopted by the Queensland, Victorian and Australian Governments. Nine written submissions were received from industry and environmental groups on the proposed framework; these are available to view [here](#).

Whilst largely reflective of the legislative framework proposed in the July 2021 Information Paper, adjustments have been made to take into consideration the stakeholder feedback received. These adjustments include:

- a narrowing of the application of the laws so they apply to onshore petroleum activities only
- inclusion of specific provisions to guide decision making so as to provide clarity and increase certainty around when the laws can be used
- additional criteria concerning the definitions for a 'related person', 'high risk company' and 'relevant connection', to provide increased certainty and effectiveness of the laws, whilst providing protections to ensure use of the laws would not be considered unjust, unfair or unreasonable.

¹ <https://depws.nt.gov.au/environment-information/environmental-policy-reform/environmental-regulatory-reform-program>

Chain of responsibility

Environmental COR laws are a regulatory compliance instrument that can be used to ensure costs associated with remediation and rehabilitation of environmental harm are borne by the persons or corporate entities responsible for the harm. The laws align with the ‘polluter pays’ ecological sustainable development principle and are put in place to assist in protecting taxpayers from inheriting environmental liabilities and the financial burden associated with cleaning up, remediating and rehabilitating the environment, if the parties responsible for the harm fail to do so (either due to negligence or insolvency). The laws operate by enabling responsibilities for environmental harm to be extended to accountable ‘related persons’ who are not the original statutory approval holder, in the circumstances deemed permissible by the legislative provisions (e.g. ability to influence compliance behaviours).

Operation of the laws in the NT

Under the EP Act, a person may be issued with an ‘environment protection notice’ (notice) to secure compliance with an environmental approval (issued under the EP Act), or a requirement prescribed by regulation. (This compliance notice framework is provided in Part 9, Division 2 of the EP Act.)

The COR laws will operate by extending the persons to whom a notice can be issued in certain circumstances, being:

- the matter relates to an onshore petroleum activity
- the person that holds the environmental obligation (usually the interest holder) is considered to be a ‘high risk entity’
- the person proposed to be issued with the notice is a ‘related person’ of the high risk entity
- the person holds a ‘relevant connection’ to the high risk entity.

The draft Bill identifies other matters that must also be considered before a notice is issued to a related person of the high risk entity, including how a person is considered to have a relevant connection (e.g. a level of influence towards compliance with an environmental obligation by a petroleum activity).

The draft Bill has been written in a manner that will allow the COR laws to be applied to other NT laws; specifically the *Petroleum Act 1984* (Petroleum Act). This will allow the laws to be applied to all petroleum activities, whether or not the petroleum activity requires approval under the EP Act, enabling full implementation of recommendation 14.30 as intended by the Inquiry.

Before the COR laws can be applied to petroleum activities managed under the Petroleum Act, the Petroleum Act must be amended to incorporate a contemporary compliance and enforcement regime similar to that contained in the EP Act. These amendments are expected to be introduced into the NT Parliament in late 2022.

Once amendments to the Petroleum Act to improve its compliance and enforcement framework are completed, the EP Regulations will be amended to prescribe the Petroleum Act, allowing the COR laws to extend to compliance notices issued under that Act.

Previous consultation outcomes

Stakeholder feedback from a number of engagement activities identified that environmental groups and land councils are strongly supportive of environmental COR laws being applied broadly across the Territory for all types of activities. The Australian Petroleum Production and Exploration Association Limited (APPEA) has also expressed in-principle support for the application of COR laws across a range of

industries. In contrast, mining and extractive industry stakeholders expressed concern about the possibility of the laws being applied broadly, claiming that such laws have the potential to act as a disincentive to investment and increase the cost of doing business in the Territory.

Although the outcomes from previous consultation has found contrasting positions across and within different stakeholder groups about how COR laws should be implemented in the Territory, in general stakeholders have indicated a level of support for the intent of environmental COR laws, while seeking further information about the specifics of how the laws will be applied.

In particular, the majority of stakeholders have queried the specifics of who will be a 'related person' under the laws, and therefore potentially held liable. The position proposed in the July 2021 Information Paper was considered to be too narrow by environmental groups, with the broader definition applied in QLD's laws preferred; whilst industry groups considered the definition was too broad, expressing a preference for Victoria's more narrow approach.

Other matters that have been raised by stakeholders relate to: a lack of clarity about the operation of the proposed laws and uncertainty about how COR interacts with other statutory instruments such as environmental bonds or securities; how decisions under the laws would be made; and the rights of appeal available under the COR laws.

All stakeholders engaged have requested further information about key components of the proposed COR laws for the Territory, with a number of requests made for further consultation and the opportunity to review draft amendment legislation. The release of an exposure draft of the Bill for consultation satisfies these stakeholder requests. It also provides a valuable opportunity to have the draft legislation, which is quite complex, to be scrutinised by multiple parties, thereby affording the possibility for improvements to the proposed legislative framework and refinements to the draft Bill prior to its introduction into the Legislative Assembly.

Refer to the 'Reading the COR Draft Bill' factsheet and 'Consultation Draft – Explanation of Clauses' factsheet for more information on specific elements of the draft Bill.

What you should do

A consultation draft of the Bill is available for public comment.

Comments on the draft Bill close on Wednesday 3 August 2022. Written Submissions should be emailed to Environment.policy@nt.gov.au

Unless you advise us otherwise, we will treat any written comments you make as public documents and they may be published on our website or be cited in any other documents that we prepare. If you do not wish for your comments to be made public, please identify this clearly in any written correspondence you provide.

Should you wish to discuss the draft Bill, please contact Environment Policy, Department of Environment, Parks and Water Security by email Environment.policy@nt.gov.au or phone 8924 4051.

Next steps

Outcomes of the consultation will be used to refine the proposed legislative amendments required to enact COR laws for the Territory. Any changes made to the draft Bill will be communicated to interested stakeholders by the Department as appropriate.

It is anticipated that, subject to Government's approval, an amendment Bill will be introduced into the Legislative Assembly of the Northern Territory in late 2022.