

Fact sheet 1: The two-stage reform program

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It may contain references to policy positions, approaches, documents or other information that has been superseded.

An introduction to the new environment protection legislation

Background

The Northern Territory is reviewing and reforming the current environmental regulatory system. Reforms are critical to achieving a robust regulatory system that the community will trust while encouraging industry investment and economic growth.

A single piece of legislation is being developed to implement a reformed environmental management regulatory framework – the environment protection Act.

Development of the Act, and the reform program, has been separated into two stages.

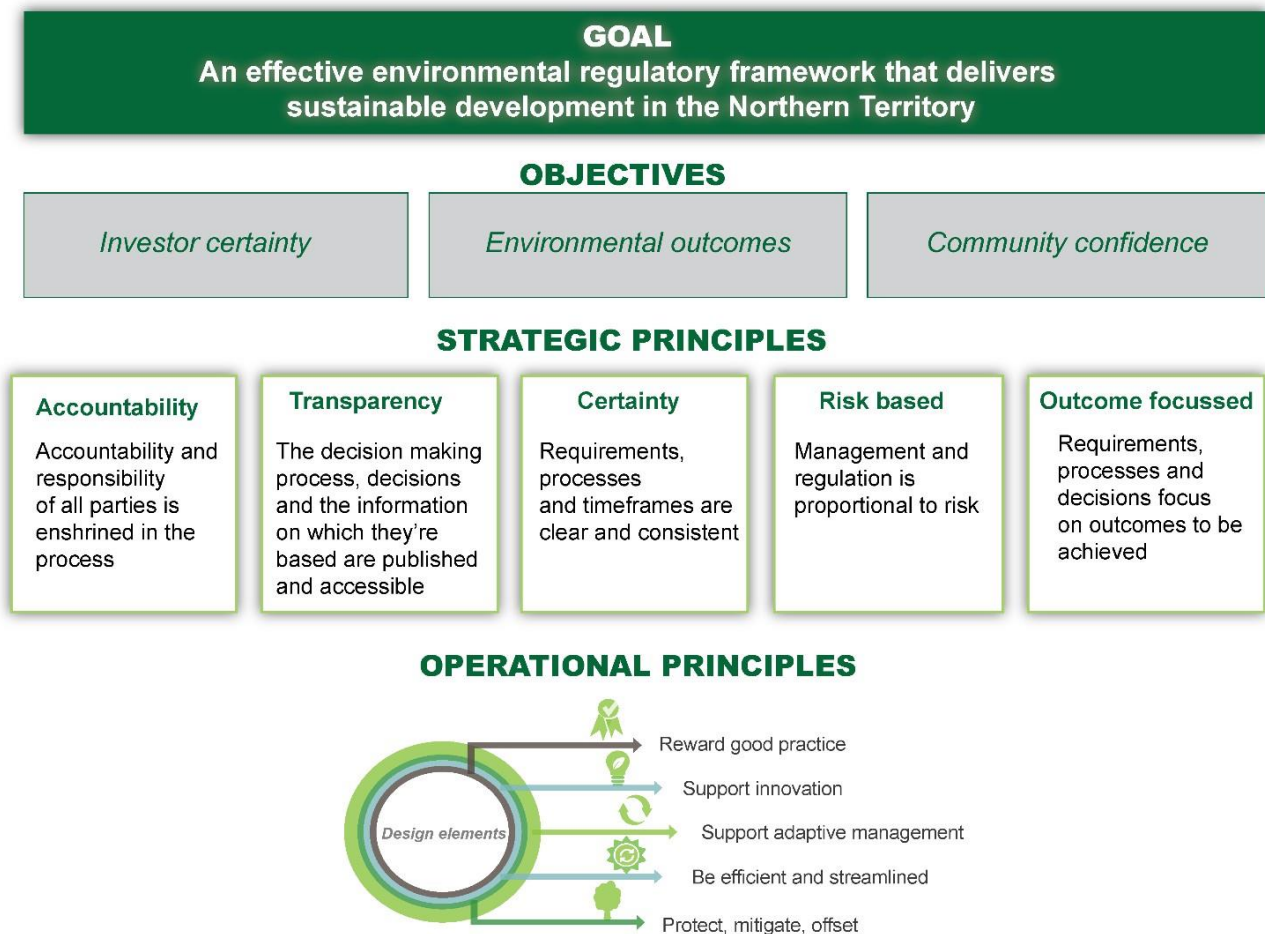
The first stage will reform the environmental impact assessment process and introduce a new environmental approval that may be granted by the Minister for Environment and Natural Resources at the completion of the assessment process.

The second stage will reform how the Territory manages its wastes, pollution, clearing of native vegetation and the environmental impacts of mining activities.

This fact sheet is one of a series of documents being produced to assist stakeholders to understand the environmental regulatory reform program, and in particular the draft environment protection Bill and draft environment protection Regulations which have been released for public consultation.

Reform goal, objectives and principles

The Northern Territory Government identified an overarching goal, objectives and principles to inform the environmental regulatory reform program. These are shown in the figure below.



Draft environment protection Bill and Regulations

The draft environment protection Bill and draft environment protection Regulations have been prepared as part of the first stage of the environmental regulatory reform program.

The draft Bill and Regulations:

- introduce changes to the environmental impact assessment system
- introduce a new environmental approval granted by the Minister for Environment and Natural Resources at the completion of the assessment process, or refusal where there is likely to be unacceptable impact
- introduce an enforceable general environmental duty which requires all persons undertaking activities in the Territory to minimise their environmental impact and remediate or rehabilitate unauthorised impacts
- contain a range of tools designed to promote compliance and enable enforcement
- provide opportunities for people to request a review of a decision made under the Bill or Regulations.

The draft Bill and Regulations will replace the existing *Environmental Assessment Act* and *Environmental Assessment Administrative Procedures*.

Objects of the Bill

The objects set out in the draft Bill are:

1. to protect the environment of the Northern Territory
2. to promote ecologically sustainable development that improves the total quality of human life, both now and in the future, in a way that:
 - a. maintains the ecological processes on which all life depends
 - b. recognises the need for development to be equitable between current and future generations.

To support these objects, the Bill establishes principles of ecologically sustainable development and sets out an environmental decision-making hierarchy to guide decision-makers and ensure the objects of the Bill are met.

Establishing a new environmental impact assessment process

The draft environment protection Bill defines the purpose of the environmental impact assessment process within the Northern Territory.

Much of the draft Bill and Regulations speak to the new environmental impact assessment system and its processes. Key elements include:

- establishing pathways for referral of proposed actions (or projects) to the Northern Territory Environment Protection Authority (NT EPA)
- placing responsibility for referring a proposed project to the NT EPA with the proponent
- increasing public scrutiny and opportunities for participation within the process
- establishing different tiers of assessment, to provide for more streamlined assessment processes
- retaining the environment impact statement and inquiry processes
- introducing capacity to conduct strategic environmental impact assessments
- supporting the environmental impact assessment process with defined offences and regulatory powers.

Introducing an environmental approval

The draft Bill introduces an environmental approval to be granted (or refused) at the conclusion of the environmental impact assessment process. All proposed projects requiring an environmental approval will be assessed under the new environmental impact assessment process.

The NT EPA will oversee the environmental impact assessment process and prepare a draft environmental approval (or a statement of unacceptable impact) for consideration by the Minister for Environment and Natural Resources. The Minister is responsible for granting or refusing the environmental approval. The draft Bill sets out matters to be considered by the Minister when making a decision on whether to issue an environmental approval for a proposed project.

The draft Bill provides for conditions to be placed on an environmental approval (also supporting the development of standard conditions), including conditions relating to an environmental offset, if appropriate, and the payment of environmental bonds.

There are supporting provisions for transferring, amending, suspending and revoking the environmental approval.

A general duty

The draft Bill establishes a general environmental duty. The general environmental duty places responsibility on a person to ensure that their actions are undertaken in a manner that prevents and minimises impacts on the environment. Where unauthorised impacts occur (i.e. not authorised through an environmental approval under the legislation), the person is responsible for undertaking any necessary remediation and rehabilitation. It is an offence not to comply with the general duty.

Establishing powers, offences and regulatory tools

The draft Bill establishes powers and enforcement tools and defines offences to support the environmental impact assessment and approval process.

Under the draft Bill, the NT EPA is provided with the powers to issue:

- a call-in notice requiring a proposed project which has the potential for significant impact to be referred
- a stop work notice requiring work on-site to cease while a proposed project is being considered under the environmental impact assessment process.

Non-compliance with these notices is an offence under the draft Bill.

The draft Bill also introduces a suite of enforcement tools to support compliance against issued notices as well as defined offences and environmental approvals.

Northern Territory Government employees can be authorised as environmental officers to undertake compliance and enforcement activity under this Bill. A member of the police force is also an environmental officer for the purposes of the Bill to assist in monitoring compliance with the legislation and investigate alleged offences.

Enforcement tools include environmental officer directions, environment protection notices, enforceable undertakings, civil and criminal proceedings.

Environment protection levy, fees and funds

The draft Bill contains provisions that will allow the Minister to introduce an environment protection levy and establish environment protection funds. The levy and funds can be used in a number of ways that are specified in the Bill, including to improve the understanding of impacts on the environment through research, and to remediate or rehabilitate the environment.

Review or appeals

The draft Bill identifies who is able to seek a review of decisions made by the Minister, NT EPA, CEO of the Department of Environment and Natural Resources and environmental officers under the Bill.

The Bill provides that any person may commence proceedings in the Supreme Court challenging the legal process that was followed in making a decision. That is, it provides for 'open standing' for judicial reviews.

It also identifies those persons that may seek merits review of decisions. Merits review is where the reviewer, in this case the Northern Territory Civil and Administrative Tribunal (NTCAT) considers whether the correct and most preferable decision at law has been made. Schedule 3 identifies which decisions can be reviewed by the NTCAT and who can seek the review. In most instances, there are a broad number of people who can seek the review. In a few limited circumstances, the review process is limited to the person who is directly affected by the decision, for example, a person who applies to be an environmental auditor.

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