



Environment Policy Team
Department of Environment and Natural Resources
Level 1, Arnhemica House, 16 Parap Road
Parap NT 0820

18th December 2019

Mode of delivery
Email to: environment.policy@nt.gov.au
18th December 2019

Dear Environment Policy Team,

Re: Submission on draft Environment Protection Regulations 2019

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

It is important that the Draft Environment Protection Regulations 2019 (the Draft Regulations) are consistent with the Environment Protection Act 2019 (the Act) and effectively support the achievement of its Objects. The Environment Centre of the Northern Territory (ECNT) therefore appreciates the opportunity to consider these Draft Regulations.

Pubic information about new Environment Impact Assessment and Approvals processes

These Draft Regulations are by necessity complex with numerous interconnected formal processes requiring specified actions within defined timeframes by proponents, the Environment Protection Authority (EPA), the community and the Minister.

These processes will be mostly new, and it's expected that Government will provide industry members with explanatory materials and briefings about the new arrangements. It's also likely that industry bodies will provide additional support to their members about how to navigate the new requirements.

Noting the limited resources of members of the community and those non-government agencies likely to be involved in environmental impact assessment processes, to help achieve the Act's Object of 'broad community involvement during the process of environmental impact assessment and environmental approval' will require the Government to also implement a tailored and detailed information campaign for the community.

Timeframes

Overall, the time-frames for responses by the EPA and the community to referrals of proposed actions and strategic proposals seem reasonable, however, there are a couple of cases where the ECNT believes these may need to be extended.

Although we are not familiar with the administrative processes and resources of the EPA, the ECNT holds concerns that the 15 business day deadline for the EPA to assess all types of referral of proposed actions or strategic proposals - from Tier 1 to Tier 3, including Proponent Initiated Environmental Impact Assessment (EIA) Referral - may be unreasonably tight.

It's noted that the EPA can request additional information in relation to referrals, and this 'stops the clock' for that period. However, this request for extra information must be made within 10 business days of receiving the referral. The 10-day period to identify deficiencies in information provided by the proponent may mean that important gaps are missed by the EPA; and then the remaining 5 business days available to review the total package may be too short for the EPA to carefully and critically assess each referral.

For Tier 2 and Tier 3EIA the public has either two or four opportunities to comment at various stages of the process; for proponent initiated EIA referral the public has three such opportunities. However, for Tier 1 assessments there is only one 15-day window in which to provide comments on the referral. It is therefore suggested that for these assessments the period for comments be extended.

Strategic Proposals

A Strategic Proposal is defined within the Act as a policy, program, plan or methodology. Section 55 of the Act outlines the process for considering referred actions and strategic proposals; these are broadly supported by the ECNT.

It also appears that such strategic proposals (relating to plans) may align with zones and overlays applied to land use planning in the Territory - to provide some guidance about sensitivities and potential risks, protections and uses of land.

However, the ECNT has concerns should approved strategic proposals across larger areas of land obviate the need for any further environmental impact assessments of individual developments – other than those that may be defined as 'significant' variations.

Strategic proposals may provide appropriate over-arching guidance for land-owners and developers about the types of developments that may be possible (or are excluded) – so they avoid costly work which may lead nowhere; they should not lead to situations where the environmental impacts of individual projects within that plan avoid being assessed.

Additional information during assessment process

Section 77 of the Draft Regulations empowers the EPA to direct the proponent to provide any additional information that it reasonably requires. It appears that under Section 79 of the Draft Regulations the EPA may choose to invite public submissions against this new information. In the interests of transparency and to enable the public to comment on all aspects of the project it is suggested that the EPA be required to release to the public all the information provided by the proponent other than that deemed confidential.

Minister's refusal to grant environmental approval – show cause process

Section 66 of the Draft Regulations requires that prior to refusing to grant an environmental approval the Minister must give a written notice of intent to the proponent and ask the proponent to show cause why the recommendations of the EPA should not be accepted.

While natural justice would require the proponent to be given reasons for a decision - and the right in certain circumstances to appeal the decision - the ECNT is concerned that the Minister telling the proponent what they intend to do and asking for reasons why they should change their mind presents risks. The proponent may present new information that has not been assessed by the EPA or the community or may otherwise change the proposal - both of which would undermine the environmental impact assessment and approvals process.

Such an approach would be akin to a judge telling the defendant that after considering all the evidence from prosecution and defence they have found the defendant guilty.... but then asking the defendant if there is any reason why this judgement should be changed...

However, as mentioned both proponents and submitters ought to have the option to appeal decisions.

It is important that the processes to be introduced ensure that proponents provide the necessary information and there is effective and informed engagement of the community – both of which are critical to help the EPA and the Minister make decisions which protect the Northern Territory's environment.

Thank you again for providing the opportunity for the ECNT to comment on the Draft Regulations.