

Fact sheet 3: New roles and responsibilities

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The distribution of responsibilities under the draft environment protection legislation

Introduction

The draft environment protection legislation allocates responsibilities for different activities to different parties. This includes proponents, approval holders or duty holders, the Northern Territory Environment Protection Authority (NT EPA), the Minister for Environment and Natural Resources, the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources (DENR) and appointed environmental officers.

This paper provides an outline of the major roles and responsibilities incorporated in the draft legislation. However, in summary responsibilities are distributed as follows:

Minister for Environment and Natural Resources: responsibility for deciding whether to grant (or refuse) an environmental approval

NT EPA: responsibility for administering and conducting the environmental impact assessment process

CEO of the DENR or appointed environmental officers: responsibility for ensuring that proponents comply with the legislation, and taking enforcement action where appropriate

Proponent, approval holder or duty holder: responsibility for referring a proposed action for consideration under the environmental impact assessment process, for complying with all the requirements of that process and for generally complying with the legislation and any conditions in an environmental approval, licence or permit.

The Minister for Environment and Natural Resources

The Minister for Environment and Natural Resources has overall responsibility for ensuring that the Territory environment is managed in an ecologically sustainable way.

Under the draft environment protection legislation, the Minister has three primary functions or responsibilities to make:

- declarations designed to protect the Territory environment and facilitate consistency in the environmental impact assessment process
- decisions about the grant, refusal, transfer, suspension and revocation of environmental approvals
- agreements and policies designed to protect the environment.

Environmental declarations

Under the draft environment protection legislation, the Minister may make a number of different types of declarations, including about:

- environmental impact assessment and approval triggers. These declarations identify the types of activities, or activities in specific areas, that need to be referred to the NT EPA as part of the impact assessment process
- Territory environmental objectives. These objectives form part of a framework of values and objectives and will be used in the impact assessment and approval system to support, and improve consistency in, decision making
- prohibited actions and protected areas. These declarations identify actions that should not be conducted in the Territory because of their potential adverse impact on the environment, or areas that are of high environmental value such that they should be protected from specific types of actions.

The Minister is required to consult with the public and the NT EPA before making any of these declarations. The Minister is also required to review declarations about triggers and objectives at least every 10 years.

Environmental approvals

Under the draft environment protection legislation, the Minister is given a range of powers associated with the introduction of an environmental approval. These include powers to grant or refuse approvals; amend conditions on approvals; transfer, suspend and revoke approvals.

The Minister is also given powers designed to ensure the continued protection of the environment, including:

- closure notices requiring a person to undertake continued investigation, monitoring or management of a site that is intended to be 'closed'
- closure certificates which can be issued to a proponent once all of their obligations under the environmental approval have been fulfilled.

Environmental agreements and policies

To facilitate and streamline environmental impact assessment processes for proponents that may be operating across a number of jurisdictions, the draft environment protection legislation contains powers for the Minister to enter into an agreement with a Minister in another jurisdiction for a co-operative environmental impact assessment of a project. The co-operative assessment agreement must meet certain criteria, including that it provides the information necessary for the Minister to determine whether to grant or refuse an environmental approval.

The draft environment protection legislation also gives the Minister power to make environment protection policies and an offset framework to provide further guidance on the expectations for environmental management in the Territory.

The NT EPA

The NT EPA's main responsibility under the draft environment protection legislation is to oversee, administer and conduct the environmental impact assessment process within the Territory.

It is the NT EPA who will receive a referral from a proponent to undertake a project (proposed action). The NT EPA will decide whether or not the project requires impact assessment, and if so, the type or method of assessment required. The NT EPA will conduct the impact assessment process to ensure that a proper evaluation of the potential significant impacts of the project is undertaken.

When the NT EPA completes its assessment, it will provide the Minister for Environment and Natural Resources (the Minister) with an assessment report. The report will identify the potential impacts of the project, and how the environmental risks and impacts have been avoided or mitigated in the design of the project. The assessment report will be accompanied by either a draft environmental approval if the NT EPA considers the environmental impacts and risks are manageable, or a 'statement of unacceptable impact' if it does not.

The NT EPA will also have the power to issue a 'call-in notice' and a 'stop work notice' if a project has not been referred and the NT EPA considers that it should have been. There are offences associated with failing to comply with these notices.

The CEO of the DENR

Under the draft environment protection legislation the CEO has responsibility for a range of administrative matters to ensure transparency in the environmental management system, such as maintaining public registers.

The primary function of the CEO under the draft environment protection legislation is to ensure compliance with the legislation. To achieve this, the CEO may:

- issue environment protection notices, specifying that certain actions must be taken (or stopped) to ensure compliance with the general environmental duty or conditions of an environmental approval
- enter into enforceable undertakings with proponents that may have breached the legislation or an approval
- negotiate civil penalties (in lieu of criminal enforcement) with proponents that may have breached the legislation or an approval
- appoint environmental officers to assist in undertaking compliance and enforcement activities.

Environmental Officers

Environmental officers may be appointed by the CEO. Members of the Police service are environmental officers.

Environmental officers are given a range of powers to investigate potential breaches of the legislation and to ensure that proponents comply with the legislation.

Proponents, approval holders and duty holders

Proponent is the term used to refer to the person who wants to conduct a project (an action). Once the proponent has been granted an environmental approval, they are generally referred to as an approval holder. A duty holder is a person that has an obligation to comply with the legislation, and includes both proponents and approval holders. Each of these may be individuals or bodies corporate.

Under the draft environment protection legislation, proponents are responsible for deciding whether or not they might need an environmental approval. If they consider they may need an approval for a project, then they are responsible for providing information to the NT EPA to allow it to determine whether or not the approval, and therefore environmental impact assessment, is required. This is known as 'making a referral'.

Duty holders have a responsibility to conduct their projects and activities in a way that minimises the impact on the environment, to take action to remediate any environmental harm and restore ecological functions impaired by actions that are not authorised, and to notify the CEO in the event an incident that threatens to cause material environmental harm occurs. These responsibilities all have the purpose of preventing and responding to unacceptable impact to the environment.