



Lock the Gate Alliance Northern Territory
28 June 2017

Environmental Regulatory Reform Submission

Dear NT Department of Environment and Natural Resources,

Thank you for recognising the need for substantial reform of the Northern Territory's environment protection framework and for the opportunity to comment on the Environmental Regulatory Reform Discussion Paper.

Lock the Gate Alliance is a national grassroots organisation made up of thousands of individuals and over 250 local groups across Australia. Our mission is to protect Australia's agricultural, environmental and cultural resources from inappropriate mining, and to educate and empower all Australians to demand sustainable solutions to food and energy production. We are committed to advocating that community health and rural industries should take priority over the development of the unconventional gas industry in Australia.

With over 80% of the Northern Territory under licence or application for onshore oil and gas exploration, Lock the Gate Alliance NT has a strong interest in ensuring the environmental assessment legislation of the Northern Territory protects communities and the environment.

Lock the Gate Alliance NT has dozens of Territory-based community action groups within our network, with thousands of supporters across the Territory. We have conducted numerous interviews with Territorians about their suggestions for improvements needed to the process of environmental assessment decision making, compliance and legacy of resource extraction in the Territory. The most recurring themes included the failure of mining companies to be responsible over the long term for mine site rehabilitation, inadequate environmental bonds, the lack of transparency around water use, inexperienced and under resourced compliance teams, blind support by government for projects, failure to undertake meaningful pre-activity scientific studies, and failure to consider cumulative impacts of neighbouring projects. It is anticipated that these issues will be addressed during Stage 2 of this consultation program, as described in the Environmental Regulatory Reform Discussion Paper (p. 3).

This submission will address the issues in the order they appear in the discussion paper's Table of Contents (p. 2). The questions from the Questions section (p. 88) of the discussion paper appear underlined throughout this submission.

• Introduction (p. 3)

This paper relates to Stage 1 of the reform program, which includes “the establishment of an environmental approval to be issued by the Minister for Environment and Natural Resources at the end of the environmental assessment process.”

Lock the Gate Alliance NT agrees that the Minister for Environment is best suited and most appropriate for making environmental decisions. This is a vast improvement on the current legislation which creates a conflict of interest by granting the ‘Responsible Minister’ the power of environmental approval.

• How this work fits with the NT EPA’s Roadmap (p. 3)

Lock the Gate NT supports the reforms guiding principles (p. 4) and have built on them where required.

- certainty – property owners, residents and businesses must have certainty that their property, homes and livelihoods are protected from adverse environmental impacts caused by new developments. Regulations must be robust, clear, transparent and consistent, and consider amenity, noise, smells, increased traffic, and other consequences of the proposed development on existing residents and developments.
- efficiency – is important, but accuracy is more so. The process must allow time for submitters to respond, ensure all stakeholders are appropriately notified, and allow time for full environmental impacts to be identified and assessed.
- outcome and risk focussed – the system seeks to achieve positive environmental outcomes by identifying and assessing risks in the approvals process with input from stakeholders.
- responsive
- accountable – players in the system are accountable for their decisions and actions with imprisonment and/or financial penalties, and/or loss of position as legislated punishments. All stakeholders must have the right to hold these players to account and to appeal decisions.
- public participation – the public is encouraged and supported to participate in the assessment and approval system by making information easily obtainable. For example, a link on the NT EPA web page to the Environmental Regulatory Reform Discussion Paper and submission site would have supported the public to respond.

What our system is designed to achieve (p. 5)

It is impossible to comment on what the proposed system has been designed to achieve without access to relevant information. For example:

- be informed by clear environmental objectives – ‘clear environmental objectives’ need to be defined.
- ensure actions that are likely to have a significant impact on the environment will undergo environmental impact assessment – ‘significant impact on the environment’ needs to be defined.

Topics and themes

- **Purpose and principles of assessment systems (p. 7)**

‘Identified issues’ (p. 7) succinctly describes the issues Lock the Gate Alliance NT raised in their ‘Response to the Draft Advice of the NT EPA Recommended Reforms for the Territory’s Environment Legislation’.

‘What we are considering’ (p. 8)

In addition to proponents undertaking and providing a self-assessment of their project before making a referral to the NT EPA, or having a project referred or called in by the NT EPA or responsible agencies, there must also be an option for members of the public to refer projects to the NT EPA.

Lock the Gate Alliance NT wishes to reiterate that all community members must be given ample time, opportunity, and resources to participate in all levels of the consultation and assessment processes. Consultation methods and timeframes must consider the seasonal nature of the regional workloads of Northern Territory residents and business owners, language barriers and long distances or lack of Internet in some areas.

Lock the Gate welcomes the introduction of ‘a framework of Territory Environmental Objectives’ to support the environmental assessment system and eagerly awaits the opportunity to contribute to the TEO’s development.

We also commend the legislation of offences and penalties to deter contraventions. The penalties for proponents contravening assessment and approval requirements must be prohibitively harsh to act as a deterrent and prevent penalties from being factored into budgets as a cost of doing business.

- **Defined assessment triggers (p. 9)**

It is concerning to read that suggestions for defining a ‘significant project’ include ‘to the exclusion of public concern’ (p.9). Public concern for the environment underpins the very existence of the NT EPA, and should be recognised as an indicator of significance.

Third Party referral rights should allow any person to refer something to the EPA and bring it to their attention.

- **Assessment processes commensurate with risk (p. 11)**

Lock the Gate Alliance NT finds the Strategic Environmental Assessment to be a useful tool in policy and planning, particularly to ensure the cumulative impacts are a formal consideration in assessment. However, we recommend that each project also be individually assessed. Strategic Environmental Assessments can be limited in that they do not allow for examining individual variations in environmental impacts across regions, industry or catchments. Environmental impacts can only accurately be assessed by examining individual projects separately as well as in addition to the SEA and cumulative impact considerations.

- **Quality of information used in decision making processes (p. 12)**

Lock the Gate disagrees with the statement, “Data collection by industry should be the minimum required for approval authorities to confirm compliance.” The minimum standard of data collection required to confirm compliance should be collected by an independent third party or by the approval authority. Industry should not be permitted to collect their own data for compliance confirmation.

“Information to support assessments should” also include soil properties, air quality, and greenhouse gas emissions (particularly methane). Species data assessments must consider the seasonal migratory or dormancy behaviour of many Northern Territory species which cause great fluctuations in both presence and abundance. Similarly, seasonal changes in landscape appearance, behaviour and uses must be included in information provided to support assessments.

Lock the Gate Alliance NT applauds that the “environmental history of the proponent (and any subsidiaries) in both the Northern Territory and other jurisdictions should be considered” when making an assessment. We suggest that the environmental history of Industry CEO’s and operations managers also be considered in decision making.

What other initiatives could be introduced to improve the quality of information available in the assessment and approval process?

Randomly assigning assessors to proponents from a pool of accredited assessors to conduct surveys, write EIAs, and check compliance would ensure the accuracy and quality of information.

What mechanisms could be introduced to better access and use Indigenous traditional knowledge in the system?

Too often the current assessment process only comes to Traditional Owners after the plans are made, and feedback sessions are mere window dressing. Having regional planning meetings where landscape management visions and local plans can be articulated would be an improvement. There are also various peer reviewed reports on incorporating traditional indigenous knowledge into planning and environmental decision making – further investigation should be a priority for the EPA.

- **Encouraging public participation (p. 14)**

Lock the Gate absolutely agrees that “members of the community should have rights to seek review of decisions made in the assessment and approval process” (p. 16).

Should draft Environmental Assessment Reports be made available for review? Either to proponents or publicly? What value is there for either proponents or the public by making the draft reports available for review?

Making the draft Environmental Assessment Reports available to the public will enable them to assess and comment on the draft report. Consideration of these comments will ensure the NT EPA’s final Environmental Assessment Report is as accurate as possible. Ample time for submissions and multiple public reminders for these reports is required.

Should upfront engagement with the community be legislated so that all referral documents are required to contain a consultation report as well as an ongoing stakeholder engagement plan?

Yes. Community engagement is vital, but it must be genuine consultation which allows the community to respond, not just information sessions without scope for community input.

How can meaningful community engagement be achieved in the EIA process while keeping timeframes manageable?

Different communities require different methods of consultation and timeframes. Timeframes must consider some communities’ lack of access to internet or newspapers, proximity to meeting places, people’s work hours, dry season work commitments (eg mustering) and wet season travel constraints. They must also allow for language and cultural differences through the use of interpreters. For example, a poorly advertised information session at 10am on a Tuesday can not be considered meaningful engagement as no-one would know about it, workers couldn’t attend, and there is no scope for community input.

Should draft EIS documents that are provided to the NT EPA before publication (for adequacy review) include a consultation report (outlining the outcomes of engagement through the EIA process and how this has informed the draft EIS) as well as a proposed stakeholder engagement plan to illustrate how the public is to be engaged through the exhibition period? Should an EIS document fail its adequacy review if it does not provide evidence of ongoing engagement and community input into the project?

Yes. By providing a stakeholder engagement plan in the draft EIS, the public are able to comment on it, ensuring the stakeholder engagement plan meets the needs of the community.

- **Improving environmental outcomes and accountability (p. 17)**

Lock the Gate Alliance NT supports suggestions that “the process introduce accountability mechanisms for consultants undertaking EIA work”, as well as “the Minister, government agencies and the NT EPA.

We are pleased the “legislation will include provisions that allow the NT EPA to reject a referral if the information is found to be inadequate” and with the introduction of “offence provisions for providing false or misleading information.”

- **Making the best use of our community’s eyes and ears (p. 18)**

Do you support any of the options outlined? Please provide information to explain why an option is supported.

Lock the Gate Alliance NT supports a combination of all five options, due to the Northern Territory’s widely distributed, sparse population and many remote locations. Land Councils, government agencies, organised environmental groups, industry organisations, affected stakeholders, and any member of the public, should be able “to make a referral to the NT EPA where there is concern or questions on whether a development/ works has an environmental approval” (pp. 18-19). We also support a confidential hotline similar to the Pollution Hotline for “members of the community to notify the NT EPA about a development” in a private process.

Should the legislation include provisions that allow for third-party injunctions and if so, how broadly should these be applied (that is, to the public or to defined groups?). Please outline the concerns you have if you do not support third-party injunctions.

Third party injunctions should be included in the legislation “where unapproved works are proceeding or works are not in compliance with an environmental approval” or people/ property are being impacted in a manner that threatens their health, comfort, amenity or livelihood.

- **Introducing review (appeals) processes (p. 20)**

How can this proposal be improved to strike the appropriate balance between providing business certainty and ensuring accountability in decision making? What groups or entities should be included or not included? Please provide information to explain your position.

Lock the Gate Alliance agrees that third parties should be entitled to the right to appeal decisions. Third parties with the right to appeal should include a person who is, or is potentially, directly affected by the decision, members of an organised environmental, community or industry organisation, Land councils and local government bodies, and people who made a legitimate submission during the assessment or approval process. Third Party appeals will ensure correct decisions are made and will support the accountability mechanism.

Which decisions made in the assessment, approval and monitoring system should be reviewable? Please provide information to explain your position.

Lock the Gate suggests that the final Terms of Reference, EIS, final Environmental Assessment Report, and final Ministerial environmental decision should be reviewable. This

will ensure the ToR is relevant, the EIS is accurate, and the correct final decision has been made, and facilitate the accountability mechanism.

Should a statement or recommendation made in an assessment report be subject to review?

Yes, this will fortify the rigor of the assessment report.

Which option (1, 2, 3 or 4) is best for the Territory? Please provide information to explain your position.

Lock the Gate Alliance is most supportive of options 1 and 4. We support a merits review of the minister's approval decision. We also support the broad rights of standing in regards to a judicial review.

Merits reviews have been found to significantly improve outcomes for the environment and should therefore be encouraged. Proper and transparent community consultation at the earliest possible opportunity can avoid the need for a merits review later.

- **Roles and responsibilities (p. 22)**

What combination of responsibilities should the NT EPA be given? Please provide information to explain why an option is supported. What improvements to the environmental management system will be achieved as a result of the NT EPA having these responsibilities?

We recommend Option 1, with the NT EPA retaining its three existing responsibilities of assessor, advisor, and regulator. This negates any conflict of interest which may be caused by a government department fulfilling these responsibilities, with the NT EPA acting as an impartial agency tasked with protecting the environment.

- **Introducing environmental offsets (p. 23)**

Environmental offsets are not considered acceptable by Lock the Gate Alliance NT. Offsets can not compensate for the environmental damage caused by an action at one site, by undertaking activities at another site.

Other comments

There is no mention of rehabilitation requirements or the requirement of environmental bonds in this Stage 1 discussion paper. Lock the Gate Alliance NT seeks to remind you that rehabilitation and environmental bonds are essential to protect against taxpayer funded clean ups and ongoing environmental contamination and disruption to livelihoods of neighbouring Traditional Owners and land users. We hope to see this in Stage 2 of this consultation process.

'Figure 2: Proposed assessment and approvals system' (p. 31) needs to be corrected to name the Minister (Minister for Environment and Natural Resources) who grants approval or makes a determination.

Lock the Gate NT hopes to be a useful resource to the NT EPA, to act as a conduit between local landholders and policy makers. We take our role of public advocacy very seriously. Our members and supporters have empowered us to speak up strongly when the decisions of the NT Government or mining companies active in the NT are not fulfilling their roles for the betterment of Territorians, have breached public trust, or where there are improvements to be made.

We hope these comments are useful in your detailed and thoughtful work to improve the environmental assessment processes across the NT.

Lock the Gate Alliance NT looks forward to future engagement on this matter and to working together for a better outcome for a sustainable, economic and environmentally pristine Northern Territory.

Yours sincerely,

Pauline Cass

On behalf of the Lock the Gate Alliance NT