

Fact sheet 14: Frequently asked questions

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It may contain references to policy positions, approaches, documents or other information that has been superseded.

General questions

What are the environmental reforms?

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. Its ultimate goal is to deliver sustainable development in the Northern Territory.

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

The environment protection Act is being developed in two stages:

- Stage one will address reforms to the environmental impact assessment system and introduce an environmental approval to be issued by the Minister for Environment and Natural Resources.
- Stage two will address Government's commitments to transform the Waste Management and Pollution Control Act into a fully functioning environment protection Act, which will also include provisions for the environmental regulation of the mining industry.

The draft environment protection Bill and supporting draft Regulations speak to stage one of the reforms.

Further information about the environmental reforms and an introduction to the new environment protection legislation can be found in Factsheet 1.

What are the timelines for the environmental reforms?

Stage one of the environment protection draft Bill and draft Regulations dealing with the proposed environmental impact assessment and approval system has been released for public comment.

This Bill and regulations are due to be introduced to the Legislative Assembly in the March 2019 sittings.

Public consultation for stage two of the reforms will commence in late 2018 and will continue through to 2019. Both targeted and general consultation will be undertaken to inform the development of the regulatory frameworks and approaches to the management of wastes and pollution, land clearing and the environmental impacts of mining.

For updates on this process please visit the environmental regulatory reform website:
<https://denr.nt.gov.au/environment-information/environmental-regulatory-reform>

The draft Bill to support these further reforms is likely to be released for public review and consultation in the second half of 2019.

What are Territory environmental values and objectives?

The draft Bill empowers the Minister to declare Territory environmental objectives to support decision making in the assessment and approval process by:

Providing proponents with a list of matters on which to identify potential impacts associated with a project. This will inform whether a project needs to be referred to the NT EPA for consideration under the environmental assessment and approval regime.

Guiding the NT EPA's judgement on the potential significance of a project on the environment, determining whether it requires an environmental approval and accordingly, environmental impact assessment.

Providing a focus for environmental impact assessment and approval documents so that assessment documents will only need to focus on those values and objectives identified by the NT EPA as having the potential for significant impact.

The Territory environmental objectives will be communicated through a Framework of Northern Territory Environmental Values and Objectives. The draft Bill provides for the Minister to consult with the NT EPA and public before declaring and publishing a Territory environmental objective.

Refer to Factsheet 13, the consultation paper providing guidance on establishing a framework of Northern Territory values and objectives for more details on how the values and objectives will underpin the assessment and approval system.

Will information be publicly available?

All information used in the environmental impact assessment system will be made publicly available, unless there are good reasons for not releasing the information, for example because it relates to cultural matters and was provided in confidence.

Schedules 1 and 2 of the draft Bill identify that certain documents and information relating to environmental assessments, approvals, audits, notices and offsets must be made available and stored on public registers.

For further details about information that will be on the public register, refer to Factsheet 11.

Environmental impact assessment and approval process

Why have an environmental impact assessment process?

The purpose of an environmental impact assessment system in the Northern Territory (NT) is to ensure that proposed actions do not have an unacceptable impact on the environment, now and into the future. Proposed actions include any project, development, undertaking, activity and works and have been referred to in this document as 'projects'.

For further information about environmental impact assessments, refer to Factsheet 7.

Who is responsible for conducting the environmental impact assessment of a project?

The NT EPA is responsible for overseeing the environmental assessment of all proposed actions and has been given powers to ensure a project with the potential for significant impact does not proceed without being subject to a review by the NT EPA. The NT EPA carries out an environmental impact assessment in accordance with the Regulations.

For further information about the NT EPA's responsibilities in conducting environmental impact assessments, refer to Factsheet 6.

What is strategic environmental assessment?

The draft Bill allows for the NT EPA to conduct strategic environmental assessments which can be used to support strategic planning (e.g. detailed community plans), development of policy or allow for assessment of cumulative impacts within a location. A strategic environmental assessment can be locality/region/catchment based, industry-specific based or issue based. The NT EPA may accept a referral for strategic assessment if it considers it appropriate to do so.

What are the roles and responsibilities in the environmental impact assessment process?

The draft Bill sets out the following roles and responsibilities for the environmental impact assessment and approvals process:

- proponents are responsible for referring a project for consideration under the environmental impact assessment system, complying with all requirements of the assessment process and legislation and any conditions in an environmental approval
- the NT EPA is responsible for administering and conducting the environmental impact assessment process
- the Minister for Environment and Natural Resources is responsible for granting (or refusing) an environmental approval
- the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources is responsible for ensuring proponents comply with the legislation and taking enforcement action where appropriate

For further information about the environmental impact assessment process, refer to Factsheet 7. Refer to Factsheet 5 for further information about roles and responsibilities in environmental management and protection contained in the draft Bill.

What are the stages of environmental impact assessment and approval?

The NT environmental impact assessment and approval system has five stages:

1. Pre-referral – proponent makes a self-assessment on whether their project requires referral
2. Referral – the NT EPA identifies whether an environmental approval is required and determines what level of assessment is required
3. Environmental Impact Assessment – there are four methods or tiers of assessment dependent on the NT EPA's information requirements, level of risks and potential impacts and complexity of the project
4. Environmental Approval – the Minister decides to issue or refuse an environmental approval with appropriate conditions

5. Post Environmental Approval – the proponent (environmental approval holder) must comply with the conditions of the environmental approval. The CEO of the Department of Environment and Natural Resources is responsible for monitoring compliance with the conditions and undertaking enforcement action where necessary.

For further information about the stages of environmental impact assessment and approval, refer to Factsheet 7.

How is a project referred to the NT EPA?

Proponents refer a project if it meets a referral trigger or an approval trigger or if it has the potential to have a significant impact on the environment. The draft Bill establishes two referral triggers, two approval triggers and provides for Territory environmental objectives to be used to make a judgement of significant impact.

The draft Regulations provides for the NT EPA to refuse to accept a referral if it contains insufficient information to enable an assessment decision, or if the NT EPA considers it does not need to be referred.

The draft Bill establishes the requirement for the NT EPA to publish the accepted referral for public comments before the NT EPA makes a decision on assessment. The draft Regulations requires the NT EPA to publish all public submissions received during an assessment process subject to any requests to withhold from publication or removal of any identifying information.

For further information about the referral pathways for the environmental impact assessment system, refer to Factsheet 8.

What are referral and approval triggers?

The draft Bill provides for the Minister for Environment and Natural Resources to establish both referral and approval triggers. The Minister will consult with the NT EPA and public on proposed activity-based and the locality-based referral and approval triggers, prior to their gazettal.

A referral trigger identifies a type of action or a locality where a project is to be referred to the NT EPA for consideration under the environmental impact assessment process. These may be activity-based and locality-based referral triggers.

An approval trigger will identify the types of actions or the localities (where an action is proposed) that must have an environmental approval in order to proceed. These may be activity-based and locality-based approval triggers. The NT EPA must accept a referral for an assessment that is based on an approval trigger.

A person must hold an environmental approval for a project if it triggers an approval trigger.

For further information about the referral and approval triggers for environmental impact assessment, refer to Factsheet 8.

What are the different methods of environmental impact assessment?

The draft Bill and Regulations introduce four different methods of assessment that reflect the NT EPA's information requirements and significance of the project:

Assessment on referral information. This form of assessment is where the NT EPA is able to prepare an Assessment Report (that is, a report of its findings and advice to the Minister for Environment and Natural Resources on whether to issue an environmental approval) based on the original referral and any further information provided as part of the acceptance of the referral.

Assessment on supplementary environmental report. This form of assessment is where the NT EPA is able to prepare an Assessment Report based on the original referral, any further

information provided as part of the acceptance of the referral and a supplementary environmental report prepared by the proponent.

Assessment by Environmental Impact Statement (EIS). This form of assessment substantially mirrors the current impact assessment process.

Assessment by Inquiry – this is for high risk actions where traditional paper based approaches may not provide the necessary level of consultation or confidence.

For further information about the different methods of environmental impact assessment, refer to Factsheet 7.

How will the method of assessment be determined by the NT EPA?

Following consultation with relevant government authorities and considering submissions received during the referral's submission period, the NT EPA decides on the method of assessment. The assessment method chosen will be; commensurate with a project's complexity, risks and potential impacts on Territory environmental values; level of certainty in assessing those risk and impacts, and the quality of information provided in the referral information.

How will significant impact be determined?

The draft Bill defines the meaning of significant impact as having regard to its context or intensity. When assessing for significance, the NT EPA would take into account the sensitivity, value and quality of the environment impacted on and the intensity, duration, magnitude and geographic extent of the impact. The NT EPA identifies where the project may have potential for significant impact on the environment applied against the Territory environmental objectives.

What is a statement of unacceptable impact?

At the conclusion of the environmental impact assessment, the NT EPA may provide the Minister with a statement of unacceptable impact with the final assessment report, if it considers the action will have unacceptable environmental impact. If the Minister accepts the statement of unacceptable impact, the Minister will refuse to grant an environmental approval. The Minister must publish a statement of reasons for refusing an approval which may refer to the statement of unacceptable impact.

Why is an environmental approval being introduced?

The Minister for Environment and Natural Resources is responsible for granting an environmental approval (or refusal). This decision will be based upon advice from the NT EPA at the conclusion of an environmental impact assessment process for a project and the draft environmental approval will be publicly available for review and comment.

The introduction of an environmental approval ensures that a project that has the potential for significant, irreversible impact on a Territory environmental objective does not proceed without changes being made to the project to mitigate and reduce impact. The environmental approval will incorporate conditions that are designed to deliver the best environmental outcomes which include:

- conditions to manage significant potential impacts on the environment
- conditions to require environmental bonds
- conditions to manage offsets.

Failure to comply with an environmental approval and its conditions is an offence and subject to enforcement action.

For further information about an environmental approval, refer to Factsheet 10.

How will an environmental approval sit with other approvals required for a project?

An environmental approval will be used for regulating significant environmental matters and will replace the need for environmental conditions being placed on authorising/approval instruments (such as permits) issued under project legislation.

The environmental approval will not replace project approvals. If a project requires authorisation under the Mining Management Act (for example) in order to operate, the environmental approval will not replace this authorisation. If a project receives an environmental approval but does not receive its project approval it cannot proceed. Similarly, if a project receives its project approval but not its environmental approval it cannot proceed.

What happens if a referred project changes during the environmental impact assessment process?

A proponent who has referred a project to the NT EPA, must provide notice to the NT EPA if changes have been made to their project (a variation) that may alter the assessment of environmental impacts or risks of the project. Similar to the initial referral process, proponents are responsible for determining whether the changes to their project may trigger a 'notice of variation'. The NT EPA may also use its power to 'call-in' a project if it believes the project has changed to the extent that it may alter the environmental impacts or risks.

If an assessment decision has not been made, the amended action provided by the proponent replaces the original referral and the NT EPA continues the referral process.

If an assessment decision and method of assessment has been determined, the NT EPA will follow a similar process of publishing the notice and obtaining additional information to assist in making a decision. The NT EPA will then decide whether the variation changes the risk profile (and therefore the significant impacts) of the project, or whether an assessment is still required. If the NT EPA decides an impact assessment is still required, it may reconsider the method of assessment or any terms of reference already prepared. The NT EPA will publish all of its decisions, along with a statement of reasons.

What happens if a proponent submits a notice of variation after completion of the assessment report?

If the proponent submits a notice of variation after the assessment report has been prepared, the Minister may suspend consideration of the report and draft environmental approval or statement of unacceptable impact until the NT EPA has made a decision on the variation.

The NT EPA follows a very similar process to the original assessment process following a referral. After considering the variation information and comments made, the NT EPA may decide:

- the variation can be managed through the proposed conditions specified in the draft environmental approval provided to the Minister with the assessment report
- the variation can be managed through an amendment to the proposed approval conditions
- the environmental impact of the variation is such that further assessment is required.

If further assessment is required, the NT EPA must determine the method of assessment and then proceed through the impact assessment process again.

Refer to Division 3 of Part 7 of the draft Regulations for further details of the assessment process for a variation after the assessment report is completed.

What happens if a proponent submits a notice of variation after an environmental approval is granted?

Division 4 of Part 7 of the draft Regulations identifies the process if a notice of variation is given to the NT EPA after an environmental approval is granted. The NT EPA undertakes a similar process of consultation to when it receives a referral and, based on all of the information received, may decide:

- the variation can be managed through the proposed conditions specified in the draft environmental approval provided to the Minister with the assessment report
- the variation can be managed through an amendment to the proposed approval conditions
- the environmental impact of the variation are such that further assessment is required.

If further assessment is required, the notice of variation is taken to be a new referral of the action to be assessed by the NT EPA.

Decisions, reviews and appeals

What are the statutory timeframes for all decisions?

All stages of the assessment and approval process will include statutory timeframes for decision making. There will be a maximum timeframe in which the Minister or NT EPA can make a decision. These timeframes may be extended where necessary, and in consultation with the proponent.

In regards to public consultation activities, timeframes will be written in terms of minimum timeframes, with the NT EPA to decide on the appropriate timeframe for consultation based on the nature of the project, its complexity and potential environmental impacts.

For further information about the statutory timeframes that apply to the environmental impact assessment system, refer to Factsheet 9.

Can decisions be reviewed and appealed?

The draft Bill provides pathways for review of decisions made under the legislation. There are two types of processes that allow a person affected by a decision to appeal the decision and the draft Bill is broadly consistent with the approach recommended by the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory:

Any person can seek a judicial review of a decision for the following:

- environmental impact assessment decisions made by the NT EPA
- approval decisions made by the Minister for Environment and Natural Resource
- licence or permit decisions made by the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources (DENR) or their delegate.

Merits review of decisions made by the Minister and for licence or permit decisions made by the CEO will be available for:

- proponents
- persons who are directly or indirectly affected by the decision
- members of an organised environmental, community or industry group
- Aboriginal Land Councils

- registered Native Title Prescribed Body Corporate or registered claimants under the Native Title Act
- local government bodies
- persons who have made genuine and valid objection during any assessment or approval process.

A judicial review considers whether a decision made by the Minister, the CEO, the NT EPA or environmental officer under the new Act followed correct legal procedure and whether the decision-maker had the authority to make the decision.

A merits review considers whether a decision was correct and the best that it could have been given the available information. Merit reviews are undertaken by the Northern Territory Civil and Administrative Tribunal (NTCAT).

Schedule 3 of the draft environment protection Bill lists the reviewable decisions and affected persons who have a right to seek review of a decision made under the legislation.

For further information about review provisions under the new environment protection legislation, refer to Factsheet 11.

What happens post environmental approval?

Once an environmental approval is issued, the approval holder must comply with the conditions of the approval. The CEO of the Department of Environment and Natural Resources has responsibility for ensuring compliance with approval conditions, and undertaking enforcement action when necessary.

Following the issue of an environmental approval, the NT EPA may review and assess the:

- effectiveness of safeguards or standards for the protection of the environment applicable to the project
- the accuracy of forecasts of the environmental impacts of the project

The NT EPA may direct an environmental audit to inform its review and may provide the findings and any comments, suggestions or recommendations in a report to the Minister.

This review process provides a mechanism of feedback on whether the predicted consequences and efficacy of mitigation measures presented in the environmental impact assessment were adequate to prevent environmental impacts.

Compliance and enforcement provisions

What offences relate to the EIA process?

The NT EPA can request (or 'call-in') a proponent to refer an action if it believes a proponent is taking an action that should be referred. It is an offence if the person fails to comply with a call-in notice.

The NT EPA may issue a stop work notice if the proponent fails to comply with a call-in notice or if action has commenced prior to completion of the environmental impact assessment and approval process. It is an offence to not comply with a stop work notice.

It is also an offence under the legislation to provide false or misleading information.

What is the difference between a stop work notice and a cease work requirement?

A stop work notice is an enforcement tool that the NT EPA can use to prevent or minimise environmental impact of a project that has commenced without an environmental approval. The stop work notice serves to minimise any financial benefit to the proponent for proceeding without an environmental approval.

A cease work requirement may be incorporated into an environment protection notice issued by the CEO of the Department of Environment and Natural Resources. It is aimed at securing compliance with environmental approval conditions, regulatory requirements or the general environmental duty. The requirement to cease work may require a person to stop an activity or not commence an activity until the environment protection notice is revoked by the CEO.

What is the difference between a closure notice and closure certificate?

A closure notice may be issued by the Minister for a site which, in the Minister's opinion, will require ongoing environmental investigation, monitoring or management as a result of the activities conducted at the site. For example, the Minister may issue a closure notice requiring the approval holder to continue to monitor a site to ensure that there are no contaminants leaching from the site into groundwater or neighbouring properties.

A closure notice can specify a number of actions that a person must comply with including preparing a management plan, taking specific actions, investigations or monitoring and arranging for an environmental audit to be carried out.

It is an offence not to comply with the requirements of a closure notice. If a person does not comply with a closure notice, the CEO may carry out any specified closure notice actions and recover the costs of taking any actions required in the closure notice.

A person who holds an environmental approval may apply for a closure certificate if the person:

- has completed the rehabilitation and remediation requirements of the environmental approval, and
- intends to sell the land or transfer the land to another person or return it to the owner of the land or to local or Territory government.

Before a closure certificate is issued, the Minister must be satisfied that the person has met the relevant closure criteria gazetted by the Minister, all rehabilitation and remediation requirements are completed in accordance with the Act and environment approval, and the person has complied with any requirements to provide financial assurance.

The effect of the closure certificate is to allow the person that holds the certificate to be relieved of future liability for contamination or environmental harm at or arising from the site.

What is an environment protection notice?

An environment protection notice is an enforcement tool issued by the CEO to ensure compliance with:

- general environmental duty
- conditions of an environmental approval
- a requirement prescribed by regulation.

Under the draft Bill, it is an offence to not comply with the requirements of an environment protection notice.

What is the general environmental duty?

The general environmental duty requires a person to not take any actions that may impact on the environment unless the person takes all reasonable and practicable measures to avoid or minimise any resulting environmental harm. It is a way of encouraging businesses to operate in an environmentally sound manner.

If a person causes unauthorised environmental harm, then the person must, to the greatest extent practicable:

- remediate the environmental harm, and
- restore any ecological functions impaired by the action.

A person must ensure that any residual adverse environmental impacts of an action taken by the person are appropriately mitigated and managed.

It is an offence not to comply with general environmental duty and engage in conduct that results in significant environmental harm, conduct that risks significant environmental harm or conduct not authorised under the Act.

How will the Minister make sure there is compliance with an environmental approval?

The CEO of the Department of Environment and Natural Resources will be responsible for monitoring compliance with an environmental approval issued by the Minister and undertaking enforcement action if necessary.

A range of enforcement tools have been provided in the event of an offence or non-compliance with an environmental approval. Enforcement tools include:

- directions
- environment protection notices
- stop work orders
- enforceable undertakings.

For further information about compliance and enforcement provisions included in the draft environment protection legislation, refer to [Factsheet 12](#).

Other provisions

What are protected environmental areas and prohibited actions?

The Minister for Environment and Natural Resources may declare an area of land with important environmental values to be a protected environmental area that should be protected from declared prohibited actions. The Minister may declare prohibited actions to not be carried out in protected environmental areas because of their potential adverse impact on the environment.

Before declaring protected environmental areas or prohibited actions, the Minister will consult with the NT EPA and publish a notice seeking comments from the public to take into consideration.

A person will not be able to seek an environmental approval for an action in a protected environmental area or for a declared prohibited action. The draft Bill establishes offences if a person conducts an action not permitted in a protected environmental area or carries out a prohibited action.

Is there a duty to notify environmental incidents?

It is important that government is advised as quickly as possible about incidents that may cause environmental harm, such as through the release of pollution, to ensure appropriate action is taken to limit environmental impacts.

The draft Bill requires the reporting of incidents that may cause 'material environmental harm'. This is harm that is not trivial or negligible in nature and the Regulations will identify a monetary limit below which material harm is not considered to occur.

The draft Bill identifies a hierarchy of reporting requirements, with primary responsibility for reporting an incident held by the approval holder. Reports can be made orally or in writing. The draft Regulations detail the relevant information to be given when providing notice of an environmental incident.

What are the financial provisions?

The draft Bill provides that a payment of an environmental protection bond and/or levy may be imposed as a condition of an environmental approval.

The purpose of an environmental protection bond is to ensure the approval holder meets their environmental obligations and if they do not, the bond is used to prevent, minimise or remediate environmental harm or to complete rehabilitation of the site. The amount or value of the bond considers; the environmental risk and project impacts; the level of uncertainty in assessing those risks, and impacts and management measures to deal with them.

An environment protection levy is a tax paid to government by industry. The levy can be used for a number of different reasons, including to undertake research to support an industry by identifying methods to manage their environmental impacts, and to remediate and rehabilitate the environment.

The draft Bill also identifies that the Minister may establish environment protection funds. These are the accounts that will hold the environmental bond or levy.