

**Power and Water Corporation
Comments
*Environmental Regulatory Reform – July 2017***

General

Page 3 Process appears similar to Commonwealth so should make the overall process reasonably seamless, which is good.

Page 5 the underpinning by an enforceable regulatory process is highly desirable, consistent with other jurisdictions it may be worth considering regulatory requirements for third party referral where there may be environmental impacts to consider but other agencies have the legal and technical expertise.

Project authorisation/approval should be subject to appropriate environmental authorisation/approval. The processes are not completely independent and therefore if project authorisation is given prior to environmental authorisation, it will create confusion for proponents of projects. As an example, in QLD mines would not issue their authorisation until the environmental authorisation was approved.

Page 6 the proposed arrangements appear comprehensive and are generally supported. Some comments for consideration:

- *Guidance Material* –
 - there probably needs to remain mechanisms for transparency-cross talk between departments and DENR in terms of a heads up so projects don't slip through the cracks. There is a role for govt departments in informing proponents of suite of approvals likely to be required. If it gets to the point of a stop work order it is probably a bit late. How does a govt department know that the proponent has self-assessed and is proceeding down the right path prior to issuing their approval independently.
- *Territory Environmental Objectives*
 - Triggers for environmental assessment need to be quantitative for ease of self-assessment by proponents. The wording 'environmental objectives' is fraught with confusion with other matters/seems too subjective. An environmental protection regulation can be used to define triggers for different classes of environmentally relevant activities that would trigger assessment for example.
- *'Go-no go'*
 - There needs to be some ramped up stipulations placed on the regulator to justify their decision making within specific timeframes under any new legislation. Evidenced based decision-making should be enshrined in legislation rather than proponents being subject to inexperienced staff making decisions without evidence of an informed basis for decisions being provided in writing. Subjective decisions

based on a staff member's area of interest/expectations need to be avoided wherever possible and transparency increased. The evidence considered in making a decision should be apparent.

Page 11 I am assuming the 'Assessment through Supplementary Information' would be once the Notice of Intent (NOI) has been submitted, additional information is sought and based on this the proposal is assessed as:

- Acceptable and requiring no further approval
- Outright rejection of the proposal
- Requiring Environmental Impact assessment via one of the processes which **may** require either a:
 - Public enquiry
 - Strategic Environmental Assessment

QUESTIONS:

- 1 **What other initiatives could be introduced to improve the quality of information available in the assessment and approvals process.**

The Victorian approach is able to include a reference panel during the preparation of the EIS. This approach can include relevant government agencies, technical experts and community representatives (often local government), this way much of the deficiencies in information were addressed during the preparation of the EIS.

Significant EES were also assessed via a public process that allowed for the proponents and their experts to be cross examined on the evidence presented in the EES (equivalent to NT EIS), with recommendations made by the tribunal head and then acted on by the Department of Planning and subsequently the Minister. This provided a more transparent assessment process than currently occurs in the NT and is a process worth considering as it provides for scrutiny; transparency and ultimately a more effective approvals process.

2. **What mechanisms could be introduced to better access and use indigenous traditional knowledge in the system.**

We understand that Victoria uses a system of accredited traditional owners to provide such input, while an improvement on what went before it is not perfect as there are often issues where the knowledge may not reside with the accredited person or if there is dispute over who is the owner of the particular knowledge however greater involvement in the early phases of the project development and in developing the EIS (all of which takes time and requires trust to be built) will ultimately improve the input.

3. **Should draft Environmental Assessment Reports be made available for review?**

Yes there would be value in such a review.

- 3.1 **To proponents or publicly?**

Draft reports should at the very least be discussed with proponents to ensure that there is no misinterpretation of the intention of the EIS and to alert to deficiencies that could be readily addressed at an early stage rather than requiring the process to run its full course and additional information be provided in a supplementary process which is frustrating for both the public and the proponent.

3.2 What value is there for either the proponent or the public by making the draft reports available for review?

We question the benefit for the public in receiving a draft assessment report, however concerns regarding lack of access to such material could be alleviated by a more open, inclusive and transparent decision making process. We believe concerns are that if the report is not seen until it is final then there is no or very limited ability to change the decision even if it is based on perceived incomplete or incorrect data.

4. 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?

If proponents see the benefits then there won't be a need to legislate for community engagement, the current approach sees it as very much a box that has to be ticked without much value being added to the process or the likely outcome. This thought process needs to be changed as genuine community engagement is vital if projects are to gain genuine community support and provide genuine community benefit.

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

The Victorian approach where projects have a reference group that includes community, government and expert representatives provides a more streamlined approach that value adds without significantly increasing timeframes as issues are resolved along the way. Thus full community consultation can occur at strategic points in the process with reasonable knowledge that most community issues have been addressed in the process. This sort of approach may also be suitable for indigenous engagement.

6. 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?

A consultation report would be a valuable addition to the draft EIS and should therefore form the basis of the proposed stakeholder engagement plan. Some proposals would require significant stakeholder engagement while others would be much less so it is difficult to propose a 'one size fits all' on stakeholder engagement and community consultation.

6.1 Should an EIS document fail its adequacy review if it does not provide evidence of ongoing engagement and community input into the project?

Not necessarily as not all proposals that require EIS would necessarily require a significant community consultation up front, this need should be based on open and transparent decision making and a rigorous assessment of who is potentially impacted by a proposal; noting that it is not just the immediate neighbours that are potentially impacted or have a genuine interest in an EIS.

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

There is merit in all 5 of the options discussed as to who can make a referral, option 5 could be considered as a 'catch all' for those individuals or groups not specifically listed in the other options

7.1 If you do not support third party referrals, please provide information to support this position.

Power and Water supports 3rd party referrals.

7.2. Are there other mechanisms to address the issue of regulating consistently and fairly across the Territory?

We do not believe that these mechanisms are a guarantee of consistently and fairly regulating across the Territory; the approaches will increase the likelihood of matters being referred however with the vast areas and unless the process is widely understood the risk of non-referral until it is considered too late to stop a proposal is remains.

8. 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)

Yes the legalisation should allow for third party injunctions. The list of people/groups who can seek a review is suitable.

8.2. Please outline the concerns you have if you do not support third party injunctions

A properly administered system is unlikely to have a significant issue with third party reviews and injunctions. If these occur it suggests a problem with the transparency and adequacy of the approvals process in the first place

9. How can this proposal be improved to strike the right balance between providing business certainty and ensuring accountability in decision making?

Power and Water believes that if you get the front end right in the decision making to ensure it is inclusive, thorough and transparent it does strike the right balance.

9.1. What groups or entities should be included or not included?

The list provided seems to be reasonably comprehensive however there may need to be a specific category relating to indigenous owners as this group may or may not be suitably represented by the Land Council. This group may not have made a submission in the belief that they were being

represented by the Land Council and there are times when the range of traditional owners represented by the Land Council may result in a relevant and impacted group having a valid concern with a decision

9.2 Please provide information to explain your position.

See above

10. Do you have any suggestions for how we can ensure frivolous and vexatious applications are minimised or avoided?

An inclusive, open, transparent and trusted assessment and approvals process is less likely to be subjected to frivolous and vexatious applications, get this right and such claims will be minimised.

If the process isn't open and transparent there is a view that the decisions are not to be trusted and this is where such frivolous and vexations applications start.

11. Which decisions made in the assessment, approval and monitoring system should be reviewable?

All three areas should be subject to review however the nature of the review is where there is scope for variation with only the final approval being open to judicial review and monitoring and assessment should be more the administrative or merits review.

11.1 Please provide information to explain your position.

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

Power and Water believe this matter links with the need for a transparent assessment process. In the NT it is very much a process within the Department and is not subjected to an effective peer or external review, an assessment process such as is used in other jurisdictions where the public and experts can challenge the validity of information provided in the EIS would overcome this requirement for merit reviews.

13. Which option from above is best for the Territory?

Power and Water believes Option 3 is the most appropriate approach for the NT

13.1. Please provide information to explain your position

It strikes the right balance of a merit review associated with the information and decision process within the Department, this will address the majority of concerns with the information and the process and leaves only Ministerial decisions subject to judicial review.

13.2. What alternative option do you suggest we consider?

A proper merit review is what is required, while Power and Water prefer's that final approvals, if at odds with the merit assessment are reviewable by the courts if this was not possible then Option 1 with all decisions reviewable as a merit review by NT CAT is preferred

13.3. Might your position change depending on who is given responsibility for decisions in the assessment and approvals process?

No the approach is preferred irrespective of who the decision maker is

13.3. Might your position change if the NT EPA was not responsible for decisions in the assessment system?

No, while Power and Water has some concerns with the NT EPA (a small board) being responsible for all approvals based on advice from a range of Government Departments we believe the process is the same.

14. What combination of responsibilities should the NT EPA be given?

The NT EPA, as a small board should be responsible for advice and strategic assessor making recommendations to Government (the Minister).

14.1. Please provide information to explain why an option is supported.

Both these roles sit with comfortably with the structure of the NT EPA as a small board., this is not the case for operational matters which are more appropriately managed by the Government Department with legislative responsibility and a staff base to conduct the operational work.

14.2 What improvements to the environmental management system will be achieved as a result of the NT EPA having these responsibilities?

The board will be responsible for high level advice and making recommendations to the Minister, with recommendation based on assessment of work conducted by NT Government officers; it makes the responsibilities clear. Power and Water believe's most people think of the NT EPA as a body similar to Vic EPA or NSW EPA with an extensive staff and skill base, this is not the case in the NT.

15. If you consider the NT EPA should not retain any of its existing responsibilities, who should be tasked with those responsibilities as the alternative?

The operational responsibilities should sit with the Department that actually conducts the work which for most operational matters is the Department of Environment and Natural Resources, however this may change depending on specific operational matters under consideration.

15.1 Please provide information to explain your position.

There is widespread confusion as to what the NT EPA is and how it functions, a clear division between strategic matters (NT EPA – independent Board) and operational matters (NT Govt Department of Environment and Natural Resources) is needed to overcome the lack of clarity. There is also a lack of clarity with respect to who (NT EPA or DENR) has carriage of what pieces/sections of environmental legislation.