

# **NORTHERN TERRITORY OF AUSTRALIA**

## **ENVIRONMENT PROTECTION AUTHORITY ACT**

As in force at 28 April 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 28 April 2010

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## ENVIRONMENT PROTECTION AUTHORITY ACT

**An Act to establish the Environment Protection Authority, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Environment Protection Authority Act*.

#### **2 Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

#### **3 Definitions**

In this Act:

**Administrative Procedures** means the *Environmental Assessment Administrative Procedures* determined under section 7 of the *Environmental Assessment Act*.

**advise** includes make a recommendation.

**Agency submission**, see section 5A(2)(b).

**Authority** means the Environment Protection Authority established by section 4.

**chairperson** means the chairperson of the Authority.

**environment** means all aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects.

**environmental authority**, for a proposed action, means a licence, permit or other authority made, granted or issued under an Act for the action.

***environmental incident*** means an incident that results, or had the potential to result, in material environmental harm or serious environmental harm as defined in the *Waste Management and Pollution Control Act*.

***member*** means a member of the Authority.

***proposed action***, see section 3 of the *Environmental Assessment Act*.

**3A                      Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

**3B                      Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 3B*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

**Part 2                      Environment Protection Authority**

**Division 1                Establishment, function, powers and independence**

**4                          Establishment**

The Environment Protection Authority is established.

**5                          Function**

The Authority's function is to advise the Minister, businesses and the community about ecologically sustainable development in the Territory.

## **5A Advice about ongoing systemic issues**

- (1) For achieving its function, the Authority is to:
  - (a) review and assess:
    - (i) the extent to which, and how, a recommendation made under the Administrative Procedures for a particular proposed action has been given effect; and
    - (ii) the effectiveness of the environmental conditions of an environmental authority for the proposed action; and
  - (b) review and assess the effectiveness of Agency responses in dealing with environmental incidents and the coordination of the responses.
- (2) Before giving advice about the operations of an Agency arising out of the review and assessment, the Authority must:
  - (a) give a copy of the proposed advice to the Chief Executive Officer of the Agency; and
  - (b) invite the Chief Executive Officer of the Agency to make a written submission to the Authority relating to the advice (an ***Agency submission***) within a reasonable stated period.
- (3) In this section:

***environmental conditions***, of an environmental authority, means conditions of the authority imposed for protecting the environment to give effect to a recommendation made under the Administrative Procedures for the action.

***recommendation*** includes a comment and a suggestion.

## **5B Other issues on which advice may be given**

- (1) For achieving its function, the Authority may also, on its own initiative or at the request of the Minister or a member of the public, give advice about any of the following matters:
  - (a) achieving best practice environmental policy and management;
  - (b) setting objectives, targets and standards for the public and private sectors;
  - (c) reviewing procedures of the public and private sectors;
  - (d) legislation and its administration;

- (e) issues affecting the Territory's capacity to achieve ecologically sustainable development;
  - (f) emerging environmental issues.
- (2) However, the Authority may give advice about the environmental aspects of a particular proposed action under subsection (1) only if the Minister is given notice of the proposed action under the Administrative Procedures after the commencement of this section.

## **6 Powers**

- (1) The Authority may do all things necessary or convenient to enable it to perform its function.
- (2) Without limiting subsection (1), the Authority may do the following:
  - (a) conduct the inquiries it considers appropriate;
  - (b) by written notice, require a person to give it relevant information within the reasonable period stated in the notice.
- (3) The Authority may ask a person having special knowledge or experience relevant to a particular inquiry to help it conduct the inquiry.

## **7 How Authority acts**

- (1) In exercising its powers and performing its function, the Authority must consult with Agencies, businesses and the community in the way it considers appropriate.
- (2) In addition, the Authority must have regard to the following:
  - (a) the principles of ecologically sustainable development;
  - (b) the need to adopt objectives, targets and standards for environmental management that are:
    - (i) soundly and scientifically based; and
    - (ii) consistent with best practices;
  - (c) the need to promote integration, certainty and reduce duplication of government processes;
  - (d) the principle that decision making processes and frameworks should effectively integrate both long-term and short-term economic, environmental and social equity considerations;

- (e) the need to consider:
  - (i) the global dimension of environmental impacts of actions and policies; and
  - (ii) regional variations in the environment;
- (f) the need to develop a strong, growing and diversified economy and a well informed and engaged private sector that can enhance the capacity for protection of the environment;
- (g) the need to maintain and enhance international competitiveness in an environmentally sound way;
- (h) the need to adopt cost effective and flexible policy instruments, including, for example, improved valuation, pricing and incentive mechanisms;
- (i) the need to facilitate community involvement (reflecting the diversity of the community) relating to issues affecting the community;
- (j) the need to be transparent in information availability and decision making and to monitor and report on outputs and outcomes;
- (k) government economic policies and priorities for the Territory.

**7A Authority and Minister may make administrative arrangement**

- (1) The Authority may make an administrative arrangement with the Minister about the exercise of its powers and performance of its function.
- (2) The arrangement may, for example, deal with the following:
  - (a) informing the Minister about an inquiry it is conducting or intends to conduct;
  - (b) the scope of the inquiry.
- (3) Subsection (2) does not limit the matters that may be dealt with in the arrangement.
- (4) However, the arrangement does not affect the Authority's independence.
- (5) The Authority must publicise the arrangement in the way it considers appropriate.

## **8            Independence**

- (1) The Authority is not subject to the Minister's direction.
- (2) In particular, the Authority is not subject to the Minister's direction in relation to the preparation and contents of any advice of the Authority.

## **Division 2            Membership**

### **9            Composition**

The Authority consists of at least 4 members but not more than 7 members.

### **10          Appointment**

- (1) The Administrator may, by *Gazette* notice, appoint a person to be a member.
- (2) The Administrator may appoint a person to be a member only if satisfied the person holds qualifications or experience that will help the Authority perform its function.
- (3) In making an appointment, the Administrator must have regard to the following:
  - (a) the person's skills and knowledge, including skills and knowledge relating to regional and indigenous issues;
  - (b) the person's experience of environmental or business issues;
  - (c) the person's experience in working with the community.

### **11          Duration of appointment**

A member holds office for the period, not exceeding 3 years, stated in the instrument of appointment.

### **12          Conditions of appointment**

A member holds office on the conditions stated in the instrument of appointment.

### **13          Chairperson**

The Minister must appoint a member to be the chairperson.



**14            When member ceases to hold office**

- (1) A member ceases to hold office if:
  - (a) the member resigns by giving written notice of resignation to the Minister; or
  - (b) the member's term of office comes to an end and the member is not re-appointed; or
  - (c) the member is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (d) the member is absent, except on leave granted by the Authority, from 3 consecutive meetings of the Authority; or
  - (e) the member is removed from office under subsection (2).
- (2) The Administrator may remove a member from office for:
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) breach of a condition of appointment; or
  - (d) dishonest or dishonourable conduct.

**Division 3            Conduct of business**

**15            Holding meetings**

- (1) The Authority must meet as often as is necessary for the exercise of its powers and the performance of its function.
- (2) However, the Authority must meet at least 4 times in each year.
- (3) The chairperson must make appropriate arrangements for the Authority to meet.

**16            Presiding member at meetings**

- (1) The chairperson must preside at all meetings of the Authority at which he or she is present.
- (2) If the chairperson is absent from a meeting, the members present must elect a member to preside.

## **17                      Procedures at meetings**

- (1) A quorum of the Authority consists of a majority of members.
- (2) A question arising for decision at a meeting must be resolved according to the opinion of a majority of the members present at the meeting and, if they are equally divided in opinion, the chairperson has a casting vote.
- (3) The Authority must keep proper minutes of its proceedings and decisions.
- (4) Subject to this Part, the Authority may decide its own procedures.

## **18                      Disclosure of interest**

- (1) If a member has a direct or indirect interest in a matter being considered or about to be considered by the Authority, the member must disclose the nature of the interest at an Authority meeting as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The disclosure must be recorded in the Authority's minutes.
- (3) The member must not, while having the interest:
  - (a) take part in any deliberation or decision of the Authority relating to the matter; or
  - (b) form part of the quorum of the Authority in any deliberation or decision of the Authority relating to the matter.
- (4) However, subsection (3) does not apply if the Authority resolves the subsection does not apply to the member.
- (5) Despite the resolution, the member may decline to take part in any deliberation or decision of the Authority relating to the matter.

## **Division 4                      Authority staff**

### **19                      Status**

Staff of the Authority must be public sector employees.

### **20                      Staff subject to direction of members**

Staff of the Authority are subject to the direction of a member in the performance of their duties.

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## **Division 5      General**

### **21      Guidelines**

- (1) The chairperson may make guidelines about the Authority's administrative practices and procedures.
- (2) Without limiting subsection (1), the guidelines may provide for dealing with culturally sensitive or commercial information.
- (3) The guidelines must not be inconsistent with this Act.

### **22      Annual report**

- (1) The Authority must, within 3 months after the end of each financial year, report to the Minister on the administration of this Act for the year.
- (2) The Minister must, within 6 sitting days after receiving the report, table a copy of it in the Legislative Assembly.

### **23      Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith:
  - (a) in the exercise or purported exercise of a power as a member;  
or
  - (b) in the performance or purported performance of a function as a member.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

## **Part 2A      Offences**

### **23A      Failing to give information**

- (1) This section applies to a person who is required by written notice under section 6(2)(b) to give the Authority relevant information for performing its function.
- (2) The person must comply with the notice.

Maximum penalty:      50 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

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- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

### **23B Misleading information or document**

- (1) A person must not give the Authority misleading information.

Fault elements:

The person:

- (a) intentionally gives the information to the Authority; and
- (b) knows the information is misleading.

Maximum penalty: 200 penalty units.

- (2) A person must not give the Authority a document containing misleading information.

Fault element:

The person:

- (a) intentionally gives the document to the Authority; and
- (b) knows the document contains misleading information.

Maximum penalty: 200 penalty units.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the attention of the Authority; and
- (b) to the extent to which the person can reasonably do so – gives the Authority the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **Part 3                      Information availability**

### **24                      Availability of advice and Agency submission**

- (1) After the Authority gives advice to the Minister (**concluding advice**), the Authority must make copies of the concluding advice available to the public in the way it considers appropriate.
- (2) If an Agency submission is made about proposed advice to which the concluding advice relates, the Authority must:
  - (a) give the Minister a copy of the submission with the concluding advice; and
  - (b) make copies of the submission available to the public with the concluding advice.
- (3) However, the Authority must withhold information from the public if it is of a commercially confidential nature.

*Note for subsection (3)*

*Under section 50 of the Information Act, information may be exempt from disclosure if it is:*

- (a) a trade secret; or*
  - (b) other information of a business, commercial or financial nature.*
- (4) In addition, the Authority may withhold other information from the public if it is satisfied there are reasonable grounds for doing so.
  - (5) Also, before making the concluding advice and submission available to the public, the Authority must give the Minister reasonable notice of its intention to do so.
  - (6) The Minister must, within 6 sitting days after receiving the concluding advice and submission, table a copy of them (excluding information of a commercially confidential nature) in the Legislative Assembly.
  - (7) This section does not apply if the concluding advice is of an administrative or preliminary nature.

### **25                      Minister to notify Authority of decision on advice**

The Minister must, as soon as practicable after a decision is taken on advice given to the Minister by the Authority (other than advice of an administrative or preliminary nature), give written notice to the Authority of the decision.

**Part 4                      Miscellaneous matters****26                      Review of Act**

The Minister must, within 5 years after the commencement of this Act:

- (a) review the operation of this Act; and
- (b) table a copy of the report of the review in the Legislative Assembly.

**27                      Regulations**

The Administrator may make regulations under this Act.

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## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

### 2

### LIST OF LEGISLATION

***Environment Protection Authority Act 2007 (Act No. 24, 2007)***

Assent date	29 October 2007
Commenced	23 January 2008 ( <i>Gaz G3</i> , 23 January 2008, p 7)

***Environment Protection Authority Amendment Act 2010 (Act No. 5, 2010)***

Assent date	17 March 2010
Commenced	pt 3: 28 April 2011; rem: 28 April 2010 ( <i>Gaz G17</i> , 28 April 2010, p 6)

### 3

### LIST OF AMENDMENTS

s 3	amd No. 5, 2010, s 4
ss 3A – 3B	ins No. 5, 2010, s 5
pt 2	
div 1 hdg	amd No. 5, 2010, s 11
s 5	sub No. 5, 2010, s 6
ss 5A – 5B	ins No. 5, 2010, s 6
s 6	amd No. 5, 2010, ss 7 and 11
s 7	amd No. 5, 2010, s 11
s 7A	ins No. 5, 2010, s 8
s 8	amd No. 5, 2010, s 11
s 10	amd No. 5, 2010, s 11
s 15	amd No. 5, 2010, s 11
pt 2A hdg	ins No. 5, 2010, s 9
ss 23A – 23B	ins No. 5, 2010, s 9
ss 24 – 25	sub No. 5, 2010, s 10