

NORTHERN TERRITORY OF AUSTRALIA

ENVIRONMENT PROTECTION ACT 2019

As in force at 28 June 2020

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 28 June 2020

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## ENVIRONMENT PROTECTION ACT 2019

**An Act to provide for the protection of the environment and for related purposes**

### **Part 1            Introduction**

#### **Division 1        Preliminary matters**

##### **1            Short title**

This Act may be cited as the *Environment Protection Act 2019*.

##### **2            Commencement**

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

##### **3            Objects**

The objects of this Act are:

- (a) to protect the environment of the Territory; and
- (b) to promote ecologically sustainable development so that the wellbeing of the people of the Territory is maintained or improved without adverse impact on the environment of the Territory; and
- (c) to recognise the role of environmental impact assessment and environmental approval in promoting the protection and management of the environment of the Territory; and
- (d) to provide for broad community involvement during the process of environmental impact assessment and environmental approval; and
- (e) to recognise the role that Aboriginal people have as stewards of their country as conferred under their traditions and recognised in law, and the importance of participation by

Aboriginal people and communities in environmental decision-making processes.

#### 4 Definitions

In this Act:

**Aboriginal land**, see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**acting in an official capacity**, in relation to a person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

**action**, see section 5.

**approval holder** means:

- (a) the person to whom an environmental approval has been issued or transferred; or
- (b) for an action to which an approval notice applies – the person who is taken to be the approval holder of the environmental approval for the action; or
- (c) a liquidator or administrator appointed for a person mentioned in paragraph (a) or (b).

**approval notice** means an approval notice issued under section 102.

**approved form** means a form approved under section 292.

**assessment report** means an assessment report referred to in section 64.

**call-in notice**, see section 53.

**CEO** means the Chief Executive Officer.

**Chief Health Officer** means the Chief Health Officer appointed under section 67 of the *Public and Environmental Health Act 2011*.

**civil order** means an order under section 248.

**civil penalty order** means an order under section 248(1)(a).

**closure certificate** means a closure certificate issued under section 213.

**closure notice** means a closure notice issued under section 199.



**cooperative agreement** means an agreement mentioned in section 45.

**court** means the Supreme Court.

**decision-maker**, for Part 2, means:

- (a) the Minister; or
- (b) the CEO; or
- (c) the NT EPA.

**ecologically sustainable development** means development that improves the total quality of human life, both now and in the future, in a way that:

- (a) maintains the ecological processes on which all life depends; and
- (b) recognises the need for development to be equitable between current and future generations.

**ecosystem-based management** means management that recognises all interactions in an ecosystem, including ecological and human interactions.

**enforceable undertaking** means an enforceable undertaking under section 215.

**enforcement order** means an enforcement order under section 216.

**environment**, see section 6.

**environment protection bond** means an environment protection bond mentioned in Part 7, Division 1.

**environment protection fund** means an environment protection fund established under section 136.

**environment protection levy** means an environment protection levy established under section 133.

**environment protection notice** means:

- (a) an environment protection notice issued under section 176; or
- (b) an emergency environment protection notice issued under section 182 or 183.

**environmental approval** means:

- (a) an environmental approval granted under Part 5; or
- (b) for an action to which an approval notice applies – the environmental approval granted under Part 5 that identifies the action.

**environmental audit**, see section 141.

**environmental decision-making hierarchy** means the hierarchy mentioned in section 26.

**environmental harm**, see section 7.

**environmental impact assessment** means an environmental impact assessment under section 57.

**environmental objective** means an environmental objective declared under section 28.

**environmental officer** means:

- (a) a person who is appointed or authorised as an environmental officer under section 159(1); or
- (b) a police officer.

**environmental offset** means a measure designed to compensate for the residual impact of an action on the environment.

**government authority** means an Agency or a statutory authority.

**impact**, see section 10.

**land** includes:

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

**land register** means the register kept by the Registrar-General under the *Land Title Act 2000*.

**material environmental harm**, see section 8.

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

**NT EPA**, see section 3 of the *Northern Territory Environment Protection Authority Act 2012*.

**obstruct** includes hinder and resist.

**occupier**, in relation to land, means:

- (a) a person occupying the land (under any title or permission, or without title or permission); or
- (b) a person entitled to occupy the land whether or not the person is actually occupying the land.

**premises** includes:

- (a) equipment, plant and structures, whether stationary or portable, and the land on which the premises are situated; and
- (b) a vehicle or other conveyance.

**principles of ecologically sustainable development**, see Part 2, Division 1.

**prohibited action** means an action declared under section 38 to be a prohibited action.

**proponent** means a person proposing to carry out, or carrying out, an action.

**protected environmental area** means an area declared under section 35 or 36 to be a protected environmental area.

**public register**, see section 284.

**publish** means make publicly available in the Territory.

**qualified person** means:

- (a) a registered environmental auditor; or
- (b) a registered environmental practitioner; or
- (c) a person or class of persons, who have the qualifications and experience determined by the CEO for the purpose of this definition.

**referral trigger** means:

- (a) an activity-based referral trigger referred to in section 29(2) and declared under section 30(1)(a); or

- (b) a location-based referral trigger referred to in section 29(3) and declared under section 30(1)(b).

**registered environmental auditor** means a person registered under Part 8, Division 3.

**registered environmental practitioner** means a person registered under Part 8, Division 4.

**residential premises**, in relation to premises that are used for both residential and non-residential purposes, means that part of the building or structure that is used only for residential purposes and does not include any land surrounding the building or structure.

**sacred site**, see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**significant environmental harm**, see section 9.

**significant impact**, see section 11.

**significant variation**, see section 12.

**specified environmental offence** means an offence against this Act for which the penalty is expressed as:

- (a) environmental offence level 1; or
- (b) environmental offence level 2; or
- (c) environmental offence level 3; or
- (d) environmental offence level 4.

**standard assessment**, see section 48.

**statement of unacceptable impact**, see section 66.

**statutory authorisation**, in relation to an action, means an approval, consent, authority, permit or other authorisation relating to that action that is provided for under an Act.

**statutory authority** means a body established under an Act for a public purpose.

**statutory decision-maker** in relation to an action, means a person or a government authority authorised under an Act to make a decision in relation to that action.

**stop work notice** means a stop work notice issued under section 194.

**strategic assessment**, see section 49.

**strategic proposal**, see section 13.

**vehicle or other conveyance** means any of the following:

- (a) a motor vehicle;
- (b) a trailer or caravan;
- (c) an aircraft;
- (d) a boat or other vessel;
- (e) a train or rolling stock on or for use on a railway.

**waste management hierarchy** means the hierarchy mentioned in section 27.

**waters** includes:

- (a) surface water, groundwater and tidal waters; and
- (b) coastal waters of the Territory, within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* (Cth); and
- (c) water containing an impurity.

*Note for section 4*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

## **Division 2 Important concepts**

### **5 Meaning of *action***

(1) **Action** includes any of the following:

- (a) a project;
- (b) a development;
- (c) an undertaking;
- (d) an activity or series of activities;
- (e) works;
- (f) a material alteration of any of the things mentioned in paragraphs (a) to (e).

- (2) A decision by a government authority authorising another person to take an action is not an action.
- (3) A grant of funding by a government authority for an action is not an action.

## **6 Meaning of *environment***

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

## **7 Meaning of *environmental harm***

- (1) ***Environmental harm*** means direct or indirect alteration of the environment to its detriment or degradation, of any degree or duration, whether temporary or permanent.
- (2) The regulations may specify alterations to which the definition of ***environmental harm*** applies.

## **8 Meaning of *material environmental harm***

***Material environmental harm*** means environmental harm that:

- (a) is not trivial or negligible in nature; and
- (b) is less serious than significant environmental harm.

## **9 Meaning of *significant environmental harm***

***Significant environmental harm*** means environmental harm that:

- (a) is of major consequence having regard to:
  - (i) the context and intensity of the harm; and
  - (ii) the sensitivity, value and quality of the environment harmed and the duration, magnitude and geographic extent of the harm; or
- (b) would, or is likely to, cost more to remediate than the monetary amount prescribed by regulation.

## **10 Meaning of *impact***

- (1) An ***impact*** of an action is:
  - (a) an event or circumstance that is a direct consequence of the action; or

- (b) an event or circumstance that is an indirect consequence of the action and the action is a substantial cause of that event or circumstance.

(2) An impact may be a cumulative impact and may occur over time.

#### **11 Meaning of *significant impact***

A ***significant impact*** of an action is an impact of major consequence having regard to:

- (a) the context and intensity of the impact; and
- (b) the sensitivity, value and quality of the environment impacted on and the duration, magnitude and geographic extent of the impact.

#### **12 Meaning of *significant variation***

A ***significant variation*** of an action is a variation that:

- (a) will alter the action to the extent that a referral trigger that did not previously apply to the action now applies; or
- (b) has the potential to have a significant impact on the environment; or
- (c) will result in new or additional areas being subject to a potential significant impact on the environment.

#### **13 Meaning of *strategic proposal***

***Strategic proposal*** means any of the following:

- (a) a policy;
- (b) a program;
- (c) a plan;
- (d) a methodology.

### **Division 3 Application provisions**

#### **14 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.

**15 Civil remedies and common law not affected**

- (1) Except where expressly provided for, this Act is taken not to affect a civil right or remedy available to a person in relation to conduct, or a failure or refusal to engage in conduct, to which this Act applies.
- (2) Compliance with this Act is not of itself evidence that a common law duty of care has been satisfied.

**16 Application of Criminal Code**

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

*Notes for section 16*

- 1 *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.*
- 2 *Sections 43CA and 43CB of the Criminal Code provide for extraterritoriality in relation to offences.*

**Part 2 Principles of environment protection and management**

**Division 1 Principles of ecologically sustainable development**

**17 Principles of ecologically sustainable development**

- (1) This Division sets out the principles of ecologically sustainable development.
- (2) A decision-maker must consider and apply these principles in making a decision under this Act.
- (3) In making a decision under this Act and stating the reasons for that decision, a decision-maker is not required to specify how the decision-maker has considered or applied these principles.

**18 Decision-making principle**

- (1) Decision-making processes should effectively integrate both long-term and short-term environmental and equitable considerations.



- (2) Decision-making processes should provide for community involvement in relation to decisions and actions that affect the community.

*Note for section 18*

*See section 6, definition **environment**.*

## **19 Precautionary principle**

- (1) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (2) Decision-making should be guided by:
- (a) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
  - (b) an assessment of the risk-weighted consequences of various options.

## **20 Principle of evidence-based decision-making**

Decisions should be based on the best available evidence in the circumstances that is relevant and reliable.

## **21 Principle of intergenerational and intragenerational equity**

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of present and future generations.

## **22 Principle of sustainable use**

Natural resources should be used in a manner that is sustainable, prudent, rational, wise and appropriate.

## **23 Principle of conservation of biological diversity and ecological integrity**

Biological diversity and ecological integrity should be conserved and maintained.

## **24 Principle of improved valuation, pricing and incentive mechanisms**

- (1) Environmental factors should be included in the valuation of assets and services.

- (2) Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.
- (3) Users of goods and services should pay prices based on the full life cycle costs of providing the goods and services, including costs relating to the use of natural resources and the ultimate disposal of wastes.
- (4) Established environmental goals should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems.

## **Division 2 Management hierarchies**

### **25 Hierarchies**

This Division sets out hierarchies for environmental decision-making and waste management.

### **26 Environmental decision-making hierarchy**

- (1) In making decisions in relation to actions that affect the environment, decision-makers, proponents and approval holders must apply the following hierarchy of approaches in order of priority:
  - (a) ensure that actions are designed to avoid adverse impacts on the environment;
  - (b) identify management options to mitigate adverse impacts on the environment to the greatest extent practicable;
  - (c) if appropriate, provide for environmental offsets in accordance with this Act for residual adverse impacts on the environment that cannot be avoided or mitigated.
- (2) In making decisions in relation to actions that affect the environment, decision-makers, proponents and approval holders must ensure that the potential for actions to enhance or restore environmental quality is identified and provided for to the extent practicable.

### **27 Waste management hierarchy**

- (1) In designing, implementing and managing an action, all reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.

- (2) For subsection (1), waste should be managed in accordance with the following hierarchy of approaches in order of priority:
- (a) avoidance of the production of waste;
  - (b) minimisation of the production of waste;
  - (c) re-use of waste;
  - (d) recycling of waste;
  - (e) recovery of energy and other resources from waste;
  - (f) treatment of waste to reduce potentially adverse impacts;
  - (g) disposal of waste in an environmentally sound manner.

## **Part 3 Environment protection declarations**

### **Division 1 Declaration of environmental objectives and referral triggers**

#### **28 Declaration of environmental objectives**

- (1) The Minister may, by *Gazette* notice, declare environmental objectives for this Act.
- (2) In developing environmental objectives, the Minister must:
- (a) identify environmental matters that have value to the Territory and that need to be protected; and
  - (b) determine for each matter the objective to be achieved in relation to the protection of the environment.
- (3) A declaration must be prepared in accordance with the regulations.
- (4) A declaration may be made on the Minister's own initiative or on the recommendation of the NT EPA under section 31.
- (5) The Minister must publish a statement of the reasons for making a declaration as soon as practicable after the declaration is made.

#### **29 Purpose and effect of referral triggers**

- (1) A referral trigger requires a proponent of an action to refer the action to the NT EPA for assessment in accordance with the regulations.

- (2) An activity-based referral trigger identifies actions that the Minister considers are likely to have a significant impact on the environment.
- (3) A location-based referral trigger identifies areas that the Minister considers are:
  - (a) of significance because of a feature of the natural or cultural environment; and
  - (b) likely to be subject to significant impact by actions.

### **30 Declaration of referral triggers**

- (1) The Minister may, by *Gazette* notice, declare either or both of the following:
  - (a) an activity-based referral trigger;
  - (b) a location-based referral trigger.
- (2) In declaring a referral trigger, the Minister may specify circumstances in which, and the thresholds above which, actions are to be subject to the trigger.
- (3) A declaration of a referral trigger must be prepared in accordance with the regulations.
- (4) The Minister must publish a statement of the reasons for making a declaration as soon as practicable after the declaration is made.

### **31 NT EPA may recommend environmental objectives and referral triggers and amendments**

- (1) The NT EPA may recommend to the Minister a proposed environmental objective or a referral trigger or an amendment to an objective or trigger.
- (2) A recommendation may be made at the request of the Minister or on the NT EPA's own initiative.
- (3) The Minister must consider the NT EPA's recommendation and may:
  - (a) accept the recommendation; or
  - (b) refuse the recommendation.
- (4) The Minister must publish a statement of reasons for making a decision under subsection (3) as soon as practicable after the decision is made.

**32 Review of environmental objectives and referral triggers**

- (1) The Minister must review the environmental objectives and referral triggers at least every 10 years.
- (2) The Minister may review the environmental objectives and referral triggers at any time.
- (3) A review must be conducted in accordance with the regulations.

**33 Amendment or revocation of environmental objective or referral trigger**

- (1) The Minister may, by *Gazette* notice, amend or revoke an environmental objective or a referral trigger.
- (2) An amendment or revocation of an environmental objective or referral trigger must be in accordance with the regulations.
- (3) The Minister must publish a statement of the reasons for the amendment or revocation as soon as practicable after the amendment is made or the environmental objective or referral trigger is revoked.

**34 Referral trigger – environmental offences**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
  - (c) a referral trigger applies to the action; and
  - (d) the conduct is not authorised under this Act; and
  - (e) the conduct results in significant environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 1.

- (2) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
  - (c) a referral trigger applies to the action; and

- (d) the conduct is not authorised under this Act; and
- (e) the conduct results in material environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

(3) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) a referral trigger applies to the action; and
- (d) the conduct is not authorised under this Act; and
- (e) the conduct causes significant environmental harm.

Penalty: environmental offence level 2.

(4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) a referral trigger applies to the action; and
- (d) the conduct is not authorised under this Act; and
- (e) the conduct causes material environmental harm.

Penalty: environmental offence level 3.

(5) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) a referral trigger applies to the action; and
- (d) the conduct is not authorised under this Act.

Penalty: environmental offence level 4.

(6) Strict liability applies to subsections (1)(c) and (d) and (2)(c) and (d).

(7) An offence against subsection (3), (4) or (5) is an offence of strict liability.

- (8) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (9) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (8).

## **Division 2 Protected environmental areas and prohibited actions**

### **35 Temporary declaration of protected environmental area**

- (1) The Minister may, by *Gazette* notice, declare an area of land to be a protected environmental area (a ***temporary declaration***) if the Minister believes on reasonable grounds that:
  - (a) the environment or an aspect of the environment of the area should be protected; and
  - (b) the declaration of the area is necessary to further the objects of this Act.
- (2) A temporary declaration has effect for the period (not exceeding 12 months) specified in the *Gazette* notice.
- (3) A temporary declaration must not be made in respect of an area within 3 months after the day on which a previous temporary declaration affecting that area expires, unless it relates to a different matter.
- (4) The Minister must consult with the NT EPA before making a temporary declaration.
- (5) The Minister must make reasonable efforts to advise any owner or occupier of land in the declared area of the making of a temporary declaration.
- (6) The Minister must publish a statement of the reasons for making a temporary declaration as soon as practicable after the declaration is made.

### **36 Permanent declaration of protected environmental area**

- (1) The Minister may, by *Gazette* notice, declare an area of land to be a protected environmental area (a ***permanent declaration***) if the Minister is satisfied that:
  - (a) the environment or an aspect of the environment of the area should be protected; and

- (b) the declaration of the area is necessary to further the objects of this Act.
- (2) A permanent declaration must be prepared in accordance with the regulations.
- (3) The Minister must publish a statement of the reasons for making the permanent declaration as soon as practicable after the declaration is made.
- (4) The Minister must table a copy of the permanent declaration in the Legislative Assembly within 6 sitting days after the declaration is made.
- (5) It is not necessary to make a temporary declaration of a protected environmental area before making a permanent declaration.
- (6) On the commencement of a permanent declaration of a protected environmental area, any temporary declaration of the area dealing with the same matter is revoked.

### **37 Regulation of actions in declared areas**

- (1) A temporary declaration or permanent declaration of a protected environmental area may specify that:
  - (a) all actions or specified actions or classes of actions in the area are prohibited; or
  - (b) certain actions, or classes of actions, in the area are prohibited; or
  - (c) certain actions, or classes of actions, in the area are permitted.
- (2) A declaration of a protected environmental area may specify thresholds:
  - (a) at or above which actions, or classes of actions, in the area are prohibited; or
  - (b) below which actions, or classes of actions, in the area are permitted.
- (3) A declaration of a protected environmental area must include the following information:
  - (a) a description of the declared area;
  - (b) the day on which the declaration takes effect;



- (c) for a temporary declaration – the period of the declaration;
- (d) any actions prohibited in the area;
- (e) any actions permitted in the area.

### **38 Declaration of prohibited actions**

- (1) The Minister may, by *Gazette* notice, declare an action or class of actions to be a prohibited action or prohibited actions if the Minister is satisfied that:
  - (a) the environment or an aspect of the environment should be protected; and
  - (b) the declaration is necessary to further the objects of this Act.
- (2) The notice must include the following information:
  - (a) a description of the declared prohibited action or class of actions;
  - (b) the day on which the declaration takes effect;
  - (c) the reason for the declaration.
- (3) A declaration must be prepared in accordance with the regulations.
- (4) The Minister must publish a statement of the reasons for making the declaration as soon as practicable after the declaration is made.
- (5) The Minister must table a copy of the declaration in the Legislative Assembly within 6 sitting days after the declaration is made.

### **39 Revocation of declaration**

- (1) The Minister may, by *Gazette* notice, revoke a temporary declaration in whole or in part if satisfied that:
  - (a) the declaration is no longer in the interests of the Territory; and
  - (b) the revocation is not inconsistent with the principles of ecologically sustainable development; and
  - (c) the revocation of the declaration will not significantly undermine the objects of this Act.

- (2) The Minister may, by *Gazette* notice, revoke a permanent declaration in whole or in part if satisfied that:
  - (a) the declaration is no longer in the interests of the Territory;  
and
  - (b) the revocation is not inconsistent with the principles of ecologically sustainable development; and
  - (c) the revocation of the declaration will not significantly undermine the objects of this Act.
- (3) The Minister may, by *Gazette* notice, revoke a declaration of a prohibited action in whole or in part if satisfied that:
  - (a) the declaration is no longer in the interests of the Territory;  
and
  - (b) the revocation is not inconsistent with the principles of ecologically sustainable development; and
  - (c) the revocation of the declaration will not significantly undermine the objects of this Act.
- (4) A revocation of a declaration under this Division must be in accordance with the regulations.
- (5) The Minister must publish a statement of the reasons for revoking a declaration under this Division as soon as practicable after the declaration is revoked.
- (6) The Minister must table a copy of the revocation of a declaration under this Division in the Legislative Assembly within 6 sitting days after the declaration is revoked.

#### **40 Protected environmental areas – environmental offences**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
  - (c) the action is prohibited under the declaration of a protected environmental area; and
  - (d) the conduct is not authorised under this Act; and

- (e) the conduct results in significant environmental harm to the protected environmental area and the person is reckless in relation to that result.

Penalty: environmental offence level 1.

- (2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
- (c) the action is prohibited under the declaration of a protected environmental area; and
- (d) the conduct is not authorised under this Act; and
- (e) the conduct causes material environmental harm to the protected environmental area and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

- (3) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) the action is prohibited under the declaration of a protected environmental area; and
- (d) the conduct is not authorised under this Act; and
- (e) the conduct causes significant environmental harm to the protected environmental area.

Penalty: environmental offence level 2.

- (4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) the action is prohibited under the declaration of a protected environmental area; and

(d) the conduct is not authorised under this Act.

Penalty: environmental offence level 3.

- (5) Strict liability applies to subsections (1)(c) and (d) and (2)(c) and (d).
- (6) An offence against subsection (3) or (4) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

#### **41 Prohibited actions – environmental offences**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
  - (c) the action is a prohibited action; and
  - (d) the conduct results in significant environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 1.

- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct is part of carrying out an action and the person is reckless in relation to that circumstance; and
  - (c) the action is a prohibited action; and
  - (d) the conduct results in material environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

- (3) A person commits an offence if:
- (a) the person engages in conduct; and

- (b) the conduct is part of carrying out an action; and
- (c) the action is a prohibited action; and
- (d) the conduct results in significant environmental harm.

Penalty: environmental offence level 2.

(4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct is part of carrying out an action; and
- (c) the action is a prohibited action.

Penalty: environmental offence level 3.

(5) Strict liability applies to subsections (1)(c) and (2)(c).

(6) An offence against subsection (3) or (4) is an offence of strict liability.

(7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **Part 4 Environmental impact assessment process**

### **Division 1 Purpose of environmental impact assessment process**

#### **42 Purpose of environmental impact assessment process**

The purpose of the environmental impact assessment process is to ensure that:

- (a) actions do not have an unacceptable impact on the environment, now or in the future; and
- (b) all actions that may have a significant impact on the environment are assessed, planned and carried out taking into account:
  - (i) the principles of ecologically sustainable development; and

- (ii) the environmental decision-making hierarchy; and
- (iii) the waste management hierarchy; and
- (iv) ecosystem-based management; and
- (v) the impacts of a changing climate; and
- (c) the potential for less environmentally damaging alternative approaches, methodologies or technologies for actions is considered; and
- (d) the community is provided with an opportunity to participate, and have its views considered, in decisions on proposed actions; and
- (e) the potential for actions to enhance or restore environmental quality through restoration or rehabilitation is identified and provided for to the extent practicable.

#### **43 General duty of proponents**

A proponent of an action has the following general duties under an environmental impact assessment process:

- (a) to provide communities that may be affected by a proposed action with information and opportunities for consultation to assist each community's understanding of the proposed action and its potential impacts and benefits;
- (b) to consult with affected communities, including Aboriginal communities, in a culturally appropriate manner;
- (c) to seek and document community knowledge and understanding (including scientific and traditional knowledge and understanding) of the natural and cultural values of areas that may be impacted by the proposed action;
- (d) to address Aboriginal values and the rights and interests of Aboriginal communities in relation to areas that may be impacted by the proposed action;
- (e) to consider the principles of ecologically sustainable development in the design of the proposed action;
- (f) to apply the environmental decision-making hierarchy in the design of the proposed action;
- (g) to consider the waste management hierarchy in the design of the proposed action.

**44 Certain referrals prohibited**

A proponent or approval holder must not refer an action to the NT EPA for assessment if it is:

- (a) a prohibited action; or
- (b) an action that is prohibited in a protected environmental area under Part 3, Division 2.

**Division 2 Cooperative agreements**

**45 Cooperative agreements – assessment process**

- (1) This section applies if a proposed action in the Territory also affects another jurisdiction.
- (2) The Minister, on the advice of the NT EPA, may enter into an agreement with a Minister of the Commonwealth, a State or another Territory in relation to the process of environmental impact assessment of a proposed action.
- (3) The purpose of the agreement is to establish a single environmental impact assessment process for the action.
- (4) The agreement must identify the process to be used to assess the proposed action.
- (5) The process must:
  - (a) meet the objects of this Act; and
  - (b) provide for community participation in the environmental impact assessment process; and
  - (c) provide for a report of the environmental impact assessment to be prepared.

**46 Proponent to have only one environmental impact assessment process**

A proponent of an action that has had an environmental impact assessment in accordance with a cooperative agreement is not required to have another environmental impact assessment of the same action under this Act.

#### **47 Significant variation of action**

- (1) A significant variation of an action that has had an environmental impact assessment in accordance with a cooperative agreement may be dealt with and assessed in accordance with the agreement.
- (2) If the cooperative agreement is no longer in place, a significant variation of an action mentioned in subsection (1) must be dealt with and assessed in accordance with Division 3.

### **Division 3 Referral and assessment**

#### **Subdivision 1 Referrals**

#### **48 Referral of proposed action**

Subject to section 49, a proponent must refer to the NT EPA for assessment (a ***standard assessment***) a proposed action that:

- (a) has the potential to have a significant impact on the environment; or
- (b) meets a referral trigger.

#### **49 Referral of strategic proposal**

A proponent, instead of referring an action under section 48, may refer a strategic proposal to the NT EPA for assessment (a ***strategic assessment***) of a proposed action or group of proposed actions under the strategic proposal that individually or in combination with each other:

- (a) will have the potential to have a significant impact on the environment; or
- (b) will meet a referral trigger.

#### **50 Referral if application made to statutory decision-maker**

- (1) This section applies if a proponent applies to a statutory decision-maker for authorisation of a proposed action and the decision-maker considers that the action should be referred to the NT EPA under this Division.
- (2) The statutory decision-maker:
  - (a) may refuse to consider the application until the action is referred to the NT EPA under this Division and a decision is made on the referral; and



- (b) must take all reasonable steps to encourage the proponent to refer the action to the NT EPA; and
  - (c) may refer the action to the NT EPA.
- (3) Subsection (2) applies despite anything to the contrary in the Act under which the application to the statutory decision-maker is made.

## **Subdivision 2 Significant variations**

### **51 Proponent to notify NT EPA of significant variation of proposed action or strategic proposal**

- (1) A proponent who has referred a proposed action to the NT EPA must give the NT EPA notice of any proposed significant variation to the proposed action.
- (2) A proponent who has referred a strategic proposal to the NT EPA must give the NT EPA notice of any proposed significant variation to the proposal.
- (3) A proponent is not required to give a notice of a proposed significant variation if the proponent refers the amended action or strategic proposal to the NT EPA for assessment under this Division.
- (4) If an amended action or strategic proposal is referred to the NT EPA under this Division, the original referral is taken to be withdrawn to the extent that it is modified by the significant variation.

### **52 Approval holder to refer proposed significant variation for assessment**

- (1) An approval holder must refer a proposed significant variation of an action to which the environmental approval applies to the NT EPA for assessment under this Division.
- (2) If a significant variation of an action is referred to the NT EPA under this Division, this Division applies as if the variation were an action.

## **Subdivision 3 Call-in notices**

### **53 Call-in notice**

- (1) If the NT EPA believes on reasonable grounds that a proponent is taking an action that should be referred to the NT EPA for assessment under this Division, it may, by written notice (a **call-in**

**notice**), request the proponent to refer the action within the time specified in the notice.

- (2) If the NT EPA believes on reasonable grounds that a proponent who has referred an action under this Division has made or is proposing a significant variation to the action, the NT EPA may, by written notice, request the proponent to give it notice of the variation under section 51 within the time specified in the notice.
- (3) If the NT EPA believes on reasonable grounds that an approval holder has made or is proposing a significant variation to the action, it may, by written notice, request the proponent to refer the variation to the NT EPA under section 52 within the time specified in the notice.
- (4) Subsections (1), (2) and (3) apply whether or not a statutory decision-maker has granted a statutory authorisation for the action.
- (5) The NT EPA must:
  - (a) make reasonable efforts to obtain the views of any statutory decision-maker who the NT EPA considers may hold views in relation to the matter; and
  - (b) consider any written comments received from the statutory decision-maker within the time specified in writing by the NT EPA.

#### **54 Offence to contravene call-in notice**

- (1) A person commits an offence if:
  - (a) the person is given a call-in notice; and
  - (b) the person contravenes the notice.

Maximum penalty: 100 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

## **Subdivision 4 Consideration by NT EPA**

### **55 Process for considering referred actions and strategic proposals**

- (1) The NT EPA must consider and deal with any referral of an action or strategic proposal under this Division in accordance with the regulations.
- (2) The NT EPA must determine whether the referred action or the actions proposed by the referred strategic proposal have the potential to have a significant impact on the environment.
- (3) In determining whether a referred action or the actions proposed by a referred strategic proposal have the potential to have a significant impact on the environment, regard must be had to any applicable environmental objectives.
- (4) Without limiting subsection (1), the NT EPA must determine that an environmental impact assessment is required for a referred action or referred strategic proposal if it determines that the referred action or the actions proposed by the referred strategic proposal have the potential to have a significant impact on the environment.
- (5) The regulations may provide for the process for considering referrals of actions and strategic proposals and determining whether an environmental impact assessment of an action or strategic proposal is required.

### **56 Process for considering notified significant variations**

- (1) The NT EPA must consider and deal with any significant variation of an action or strategic proposal notified to the NT EPA under this Division in accordance with the regulations.
- (2) If a significant variation is notified to the NT EPA under this Division after an assessment report is prepared and before an environmental approval is given:
  - (a) the approval process under Part 5 ceases until the assessment of the variation is completed; and
  - (b) on completion of the assessment of the variation – the NT EPA may prepare and provide to the Minister:
    - (i) a revised assessment report; or
    - (ii) an addendum to the assessment report; or
    - (iii) a new assessment report; and

- (c) if a revised or new assessment report is provided to the Minister – the NT EPA must prepare and provide to the Minister:
  - (i) a revised draft environmental approval; or
  - (ii) a statement of unacceptable impact.
- (3) The Minister must consider:
  - (a) any document provided to the Minister under subsection (2)(b)(i) and (iii) and (c) in place of the relevant documents originally provided under Part 5; or
  - (b) any addendum provided to the Minister under subsection (2)(b)(ii) in addition to the assessment report originally provided under Part 5.
- (4) Section 55(2) to (5) applies (with any necessary changes) to an assessment of a significant variation notified to the NT EPA under this Division.

## **Subdivision 5 Environmental impact assessment by NT EPA**

### **57 NT EPA to carry out environmental impact assessments of referred actions or strategic proposals**

- (1) If the NT EPA determines that an environmental impact assessment of a referred action or strategic proposal is required under this Act, the NT EPA must carry out the assessment in accordance with the regulations.
- (2) The regulations may provide for the processes and methods for the environmental impact assessment of referred actions or strategic proposals.

## **Subdivision 6 Statutory authorisations**

### **58 Statutory authorisations and environmental impact assessments**

- (1) A statutory decision-maker may consider an application for a statutory authorisation for a referred action while an environmental impact assessment of the referred action is being carried out under this Act.

- (2) A statutory decision-maker must not grant a statutory authorisation for a referred action until the later of:
- (a) the determination by the NT EPA as to whether the referred action requires an environmental impact assessment under this Act; and
  - (b) if an environmental impact assessment is required for the referred action – the completion of the environmental impact assessment and environmental approval process for the action.
- (3) Nothing in this section prevents a statutory decision-maker from granting a statutory authorisation to carry out any activity required to inform the environmental impact assessment process.

## **59 Statutory authorisation granted before referral of action**

- (1) A statutory authorisation that is granted for an action before the referral of the action ceases to have effect:
- (a) for the period:
    - (i) commencing on a determination by the NT EPA that the action requires an environmental impact assessment under this Act; and
    - (ii) ending on the completion of the environmental impact assessment and environmental approval process for the action; and
  - (b) if a stop work notice is issued for the action – while the stop work notice is in force.
- (2) Subsection (1) does not apply to a statutory authorisation mentioned in section 58(3).
- (3) Subsection (1) applies despite anything to the contrary in the enactment authorising the statutory authorisation.

## **Part 5 Environmental approvals**

### **Division 1 Preliminary matters**

#### **60 Purpose of Part**

The purpose of this Part is to provide for:

- (a) the granting and amendment of environmental approvals; and

- (b) the transfer, suspension and revocation of environmental approvals.

## **61 Purpose of environmental approval**

The purpose of an environmental approval is to manage the potentially significant environmental impacts of an action including any of the following:

- (a) the planning and design of the action and any preliminary activities relating to the action;
- (b) the construction or carrying out of works for the action;
- (c) the operation of the action;
- (d) the rehabilitation and remediation requirements resulting from the action;
- (e) the closure of the action.

## **62 Fit and proper person to hold environmental approval**

In determining under this Part whether a person is or is not a fit and proper person to hold an environmental approval, the Minister:

- (a) may have regard to whether there are reasonable grounds to believe that the person:
  - (i) has contravened a law of the Territory or another jurisdiction that relates to the physical or biological environment, including matters relating to pollution, biodiversity, natural resources, planning, development or waste; or
  - (ii) has contravened a law of the Territory or another jurisdiction that relates to heritage, health or cultural matters, including matters relating to sacred sites; or
  - (iii) has contravened a law of the Territory or another jurisdiction that relates to work health and safety; or
  - (iv) has committed an offence against any law of the Territory or another jurisdiction that involves an element of fraud or dishonesty; or
  - (v) has behaved or is likely to behave in a way that is inconsistent with the person's duties as an approval holder; and

- (b) must have regard to the matters prescribed by regulation; and
- (c) may have regard to any other matters the Minister considers relevant.

## **Division 2      NT EPA to provide assessment report and other documents to Minister**

### **63      Application of Division**

This Division sets out the obligations of the NT EPA on completion of an environmental impact assessment of an action.

### **64      Assessment report**

On completion of an environmental impact assessment of an action under Part 4, the NT EPA must provide an assessment report to the Minister.

### **65      Draft environmental approval**

- (1) The NT EPA must provide the following to the Minister with the assessment report:
  - (a) a draft environmental approval prepared in accordance with the regulations;
  - (b) any submissions received by the NT EPA on the draft environmental approval under the regulations;
  - (c) any written comments of the NT EPA on those submissions.
- (2) Subsection (1) does not apply if the NT EPA provides the Minister with a statement of unacceptable impact under section 66.
- (3) The draft environmental approval may set out the conditions recommended to apply to that approval.

### **66      Statement of unacceptable impact**

- (1) The NT EPA may provide the Minister with a statement of unacceptable impact with the assessment report if it considers that:
  - (a) the action will have an unacceptable environmental impact; and
  - (b) the impact cannot be appropriately avoided, mitigated or managed and an environmental offset is not appropriate.

- (2) The NT EPA must provide the following to the Minister with the statement of unacceptable impact:
  - (a) any submissions received by the NT EPA on the draft statement of unacceptable impact under the regulations;
  - (b) any written comments of the NT EPA on those submissions.

#### **67 Notice of assessment report and other documents**

- (1) The NT EPA must publish a notice stating where the following documents provided to the Minister may be obtained or inspected:
  - (a) an assessment report on an action;
  - (b) a draft environmental approval;
  - (c) a statement of unacceptable impact.
- (2) The notice must be published as soon as practicable after the documents are provided to the Minister.

### **Division 3 Decision of Minister on environmental approval**

#### **68 Application of Division**

This Division applies to a draft environmental approval provided to the Minister by the NT EPA under Division 2.

#### **69 Decision of Minister in relation to draft environmental approval**

- (1) The Minister may:
  - (a) accept the draft environmental approval and grant the approval; or
  - (b) grant an amended environmental approval; or
  - (c) refuse to grant the environmental approval.
- (2) If the Minister refuses under subsection (1)(c) to grant the environmental approval, the Minister must as soon as practicable after the decision is made:
  - (a) prepare and publish a statement of reasons for refusing to grant the approval; and
  - (b) give a copy of the decision and the statement of reasons for the decision to:
    - (i) the NT EPA; and



- (ii) the proponent; and
- (iii) any statutory decision-maker consulted under this Division in relation to the proposal to refuse to grant the environmental approval.

**70 Consultation on proposal to grant an amended approval**

- (1) If the Minister proposes to grant an amended environmental approval, the Minister must:
  - (a) consult with:
    - (i) the NT EPA; and
    - (ii) the proponent; and
  - (b) make reasonable efforts to obtain the views of:
    - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
    - (ii) if the amendment relates to a potential health impact of an action – the Chief Health Officer; and
    - (iii) if the amendment relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and
  - (c) consider any written comments received within the time specified in writing by the Minister from a person or entity referred to in paragraph (a) or (b).
- (2) The required time under section 74 for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (1).

**71 Consultation on proposal to refuse to grant environmental approval**

- (1) If the Minister proposes to refuse to grant an environmental approval, the Minister must:
  - (a) make reasonable efforts to obtain the views of any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
  - (b) consider any written comments received from the statutory decision-maker within the time specified in writing by the Minister.

- (2) The required time under section 74 for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (1).

## **72 Show cause process**

- (1) The Minister must not refuse to grant an environmental approval unless the Minister has first complied with this section.
- (2) The Minister must give written notice (a **show cause notice**) to the proponent:
  - (a) stating the Minister's intention to refuse to grant the environmental approval; and
  - (b) asking the proponent to show cause why the environmental approval should be granted.
- (3) The show cause notice must specify the date by which the proponent may show cause.
- (4) The date specified in the show cause notice must be not less than 10 business days after the date of the notice.
- (5) The Minister must consider any response given by the proponent to the show cause notice in making a decision under section 69.

## **73 Matters to be considered by Minister in deciding on environmental approval**

- (1) In addition to the matters set out in Part 2, the Minister must have regard to the following in deciding whether to grant or refuse an environmental approval for an action:
  - (a) the objects of this Act;
  - (b) the assessment report on the action;
  - (c) whether the proponent is a fit and proper person to hold an environmental approval;
  - (d) any other matters the Minister considers relevant.
- (2) Before granting an environmental approval for an action, the Minister must be satisfied that:
  - (a) the community has been consulted on the potential environmental impacts and environmental benefits of the proposed action; and

- (b) the significant impacts of the action have been appropriately avoided or mitigated or can be appropriately managed; and
- (c) if appropriate, environmental offsets can be provided in accordance with this Act for significant residual adverse impacts on the environment that cannot be avoided or mitigated.

#### **74 Time for decision on environmental approval**

- (1) The Minister must make a decision to grant or refuse an environmental approval within the required time.
- (2) If the Minister does not make a decision within the required time to grant or refuse an environmental approval:
  - (a) the Minister is taken to have accepted the NT EPA recommendations for the action; and
  - (b) if the NT EPA has recommended the granting of the environmental approval – the draft environmental approval prepared by the NT EPA is taken to be an environmental approval granted by the Minister on the day after the end of the required time.
- (3) In this section:

***required time*** means 30 business days after the Minister receives the assessment report and draft environmental approval.

### **Division 4 Decision of Minister on statement of unacceptable impact**

#### **75 Application of Division**

This Division applies if the NT EPA provides the Minister with a statement of unacceptable impact under Division 2.

#### **76 Minister's decision in relation to statement**

- (1) If the NT EPA provides the Minister with a statement of unacceptable impact, the Minister:
  - (a) must consider the assessment report and the statement; and
  - (b) may decide:
    - (i) to accept the statement and refuse to grant the environmental approval; or

- (ii) not to accept the statement and grant environmental approval to the proponent.
- (2) In addition to the matters set out in Part 2, the Minister must have regard to the following in making a decision under this section:
  - (a) the objects of this Act;
  - (b) the assessment report on the action;
  - (c) any other matters the Minister considers relevant.
- (3) If the Minister intends to accept the statement of unacceptable impact, the Minister must:
  - (a) make reasonable efforts to obtain the views of any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
  - (b) consider any written comments received from the statutory decision-maker within the time specified in writing by the Minister.
- (4) The required time under section 77 for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (3).
- (5) Before deciding not to accept a statement of unacceptable impact, the Minister must be satisfied that:
  - (a) the community has been consulted on the potential environmental impacts and environmental benefits of the proposed action; and
  - (b) the significant impacts of the action have been appropriately avoided or mitigated or can be appropriately managed; and
  - (c) if appropriate, environmental offsets can be provided in accordance with this Act for significant residual adverse impacts on the environment that cannot be avoided or mitigated; and
  - (d) the proponent is a fit and proper person to hold an environmental approval.

## **77 Time for decision on statement of unacceptable impact**

- (1) The Minister must make a decision to accept or not accept a statement of unacceptable impact within the required time.

- (2) If the Minister does not make a decision within the required time to accept or not accept a statement of unacceptable impact, the Minister is taken to have:
  - (a) accepted the statement of unacceptable impact; and
  - (b) refused to grant the environmental approval.
- (3) In this section:

**required time** means 30 business days after the Minister receives the assessment report and statement of unacceptable impact.

## **78 Show cause process**

- (1) The Minister must not accept a statement of unacceptable impact unless the Minister has first complied with this section.
- (2) The Minister must give written notice (a **show cause notice**) to the proponent:
  - (a) stating the Minister's intention to accept the statement of unacceptable impact; and
  - (b) asking the proponent to show cause why the statement should not be accepted.
- (3) The show cause notice must specify the date by which the proponent may show cause.
- (4) The date specified in the show cause notice must be not less than 10 business days after the date of the notice.
- (5) The Minister must consider any response given by the proponent to the show cause notice in making a decision under section 76.

## **79 Refusal of approval if Minister accepts statement**

- (1) If the Minister accepts the statement of unacceptable impact, the Minister must refuse to grant the environmental approval.
- (2) If the Minister accepts the statement of unacceptable impact, the Minister must:
  - (a) publish a statement of reasons for refusing the approval; and
  - (b) give a copy of the decision and the statement of reasons for the decision to:
    - (i) the NT EPA; and

- (ii) the proponent; and
  - (iii) any statutory decision-maker consulted in relation to the statement of unacceptable impact.
- (3) The statement of reasons may refer to or adopt the statement of unacceptable impact.

## **80 Environmental approval granted if Minister rejects statement**

- (1) If the Minister does not accept the statement of unacceptable impact, the Minister must grant an environmental approval within the required time.
- (2) If the Minister proposes to grant an environmental approval under subsection (1), the Minister must:
  - (a) consult with:
    - (i) the NT EPA; and
    - (ii) the proponent; and
  - (b) make reasonable efforts to obtain the views of:
    - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
    - (ii) if the approval is to include a condition that relates to a potential health impact of an action – the Chief Health Officer; and
    - (iii) if the approval is to include a condition that relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and
  - (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).
- (3) The required time under this section ceases to run during any period that the Minister carries out a consultation under subsection (2).
- (4) In this section:

**required time** means 60 business days after the Minister makes the decision not to accept the statement of unacceptable impact.

## **Division 5 Publication of environmental approval**

### **81 Application of Division**

This Division sets out the requirements for the publication of an environmental approval granted under this Part.

### **82 Publication of environmental approval**

- (1) Subject to subsection (2), the Minister must publish an environmental approval granted under Division 3 or 4 as soon as practicable after it is granted.
- (2) If a draft environmental approval is taken to be an environmental approval under section 74(2), the CEO must, as soon as practicable after the approval takes effect, publish:
  - (a) the environmental approval; and
  - (b) a statement that the approval has been granted under section 74(2).
- (3) If the environmental approval is granted under section 69 or 80(1), the Minister must publish a statement of reasons for the approval.
- (4) The statement of reasons must include the following:
  - (a) for an approval granted under section 69(1)(a) – a statement that the proposed conditions of the NT EPA have been adopted;
  - (b) for an approval granted under section 69(1)(b) – a statement of the amendments made and the reasons for those amendments;
  - (c) for an approval granted under section 80 – a statement of the reasons for not accepting the statement of unacceptable impact and for granting the approval.
- (5) The Minister must give a copy of the environmental approval and any statement of reasons published under subsection (3) to:
  - (a) the NT EPA; and
  - (b) the proponent; and
  - (c) any statutory decision-maker consulted in accordance with section 70 or 80.

## **Division 6 Conditions of environmental approval**

### **83 Application of Division**

This Division sets out matters relating to the conditions of an environmental approval.

### **84 Conditions of environmental approval**

- (1) An environmental approval may be granted subject to any conditions that the Minister considers necessary in relation to the potential environmental impacts of the action and imposes on the approval in accordance with this Act.
- (2) It is a condition of each environmental approval that any action to which the approval applies complies with the requirements of this Act and the approval.
- (3) An approval holder must comply with the conditions of the environmental approval.

### **85 Condition may apply after action completed**

- (1) A condition may be expressed to continue to apply in relation to an action to which the environmental approval applies after the completion of the action.
- (2) Without limiting subsection (1), the conditions of an environmental approval may include requirements for:
  - (a) rehabilitation of the site after the action is completed or the site of the action is closed; and
  - (b) ongoing monitoring and reporting after the action is completed or the site of the action is closed.

### **86 Conditions imposing financial requirements**

- (1) A condition may require the approval holder to provide an environment protection bond in accordance with Part 7, Division 1.
- (2) A condition may require the approval holder to pay an environment protection levy in accordance with Part 7, Division 2.

### **87 Conditions requiring reporting of compliance with approval**

- (1) A condition may require the approval holder to report to the CEO on the approval holder's compliance with the environmental approval and with any other requirements imposed by this Act in relation to the approval.



- (2) A report must be provided in the manner and at the times specified in the approval.
- (3) The CEO may direct the approval holder to publish the report in the manner the CEO directs.

**88 Conditions relating to management of health, social and cultural impacts**

- (1) Without limiting section 84, the Minister may impose conditions on an environmental approval to manage the potential health, social and cultural impacts of the action identified in the assessment report.
- (2) The Minister must not impose a condition mentioned in subsection (1) in relation to an action if a similar condition could be imposed on a licence, permit or other authority issued or granted under another enactment.

**89 Conditions of environmental approval – environmental offences**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the person is the approval holder for an environmental approval; and
  - (c) the conduct contravenes a condition of the environmental approval and the person is reckless in relation to that result; and
  - (d) the conduct results in significant environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 1.

- (2) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the person is the approval holder for an environmental approval; and
  - (c) the conduct contravenes a condition of the environmental approval and the person is reckless in relation to that result; and

- (d) the conduct results in material environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

- (3) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person is the approval holder for an environmental approval; and
- (c) the conduct contravenes a condition of the environmental approval; and
- (d) the conduct results in significant environmental harm.

Penalty: environmental offence level 2.

- (4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person is the approval holder for an environmental approval; and
- (c) the conduct contravenes a condition of the environmental approval.

Penalty: environmental offence level 3.

- (5) Strict liability applies to subsections (1)(b) and (2)(b).
- (6) An offence against subsection (3) or (4) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **Division 7 Effect of environmental approval**

### **90 Application of Division**

This Division sets out the effect of an environmental approval.

**91 Effect of environmental approval**

- (1) An environmental approval authorises the approval holder to take the action approved by the approval in accordance with:
  - (a) the approval; and
  - (b) the conditions of the approval; and
  - (c) the requirements of this Act.
- (2) An environmental approval remains in force until it is revoked or expires.
- (3) An environmental approval is taken not to be in force during any period that it is suspended.

**92 Environmental approval to prevail over other statutory authorisations**

- (1) An environmental approval has effect despite anything to the contrary in any other statutory authorisation.
- (2) Despite anything to the contrary in any other Act, a statutory decision-maker must not make a decision in relation to a statutory authorisation (including an amendment to an authorisation) that is inconsistent with an environmental approval.
- (3) A statutory authorisation granted before or after an environmental approval is of no effect to the extent that it is inconsistent with an environmental approval.
- (4) Nothing in this section prevents a statutory decision-maker from refusing to grant a statutory authorisation on the basis of a potential economic, social, health or cultural impact.
- (5) For this section, a statutory authorisation is not inconsistent with an environmental approval on the basis that the statutory authorisation includes conditions that:
  - (a) are more stringent than the environmental approval; or
  - (b) address matters that are not included in the environmental approval.

### **93 Environmental approval not personal property**

For section 8(1)(k) of the *Personal Property Securities Act 2009* (Cth), an environmental approval is not personal property for that Act.

*Note for section 93*

*A law of the Commonwealth, a State or a Territory may declare a right, licence or authority granted by or under that law not to be personal property for the Personal Property Securities Act 2009 (Cth)*

### **94 Expiry of environmental approval**

- (1) An environmental approval relating to an action expires if the approval holder does not take a required step or the required steps specified in the approval in relation to the action within:
  - (a) the time specified in the approval; or
  - (b) that time as extended by the Minister on an application under this section.
- (2) In determining a time under subsection (1), the Minister may have regard to any matters the Minister considers relevant including the following:
  - (a) the complexity of the action and the environment affected;
  - (b) the likelihood of significant change to the environment;
  - (c) the extent to which the approval holder is required to take the action;
  - (d) whether the environmental approval is granted on the basis of a strategic assessment.
- (3) An approval holder may apply to the Minister to extend the time specified for taking a step in relation to an action.
- (4) The Minister may grant an extension of time before, or within 12 weeks after, the time specified in the approval for taking the step.
- (5) If a time is extended under subsection (4):
  - (a) the extension is taken to have effect from the end of the time specified for taking the step or that time as previously extended; and
  - (b) the environmental approval is taken not to have expired.

**95 Environmental approval revoked if amended approval granted**

An environmental approval for an action is revoked if an amended approval for the action is granted.

**Division 8 Approval notice for actions under environmental approval for strategic proposal**

**96 Application of Division**

This Division provides for an approval notice for a proposed action if an environmental approval has been granted following a strategic assessment.

**97 Purpose of approval notice**

The purpose of an approval notice is to provide approval for a proposed action that was considered as part of a strategic proposal for which an environmental approval has been granted.

**98 Application for approval notice**

A person may apply to the Minister for an approval notice for a proposed action if:

- (a) the proposed action has been assessed under a strategic assessment; and
- (b) an environmental approval was granted as a result of the strategic assessment; and
- (c) the proposed action is within the scope of the proposed actions considered as part of the strategic assessment.

**99 Minister may request further information**

- (1) On receipt of an application under section 98, the Minister may request the applicant to give the Minister any further information necessary to enable the Minister to decide whether to accept the application.
- (2) A request must:
  - (a) be in writing; and
  - (b) be made within 20 business days after the Minister receives the application; and
  - (c) specify a time for providing the information.

- (3) The applicant must give the information to the Minister within the time specified in the request.
- (4) If the Minister requests information under this section, the required time under section 101(2) for the Minister to make a decision ceases to run until the information is provided.

#### **100 Consultation on application**

- (1) Before making a decision on an application under section 101, the Minister must:
  - (a) consult with the NT EPA; and
  - (b) make reasonable efforts to obtain the views of any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
  - (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).
- (2) The required time under section 101(2) for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (1).

#### **101 Decision of Minister in relation to approval notice**

- (1) The Minister may:
  - (a) approve an application under section 98; or
  - (b) refuse to approve an application under section 98.
- (2) The Minister must make a decision on the application within the required time.
- (3) Before making a decision to approve an application, the Minister must be satisfied that:
  - (a) the proposed action has been assessed under a strategic assessment; and
  - (b) the applicant is a fit and proper person to hold an environmental approval; and
  - (c) it is appropriate in the circumstances to issue the approval notice.

(4) The Minister must not issue an approval notice for a proposed action if the environmental approval relevant to that application has expired or been revoked.

(5) In this section:

**required time** means 60 business days after the Minister receives the application for the approval notice.

## **102 Issue of approval notice**

(1) If the Minister approves an application under section 101, the Minister must issue an approval notice to the applicant.

(2) If the Minister approves an application under section 101, the Minister must give a copy of the approval notice to:

- (a) the NT EPA; and
- (b) any statutory decision-maker consulted under section 100; and
- (c) the approval holder of the environmental approval for the strategic proposal.

## **103 Effect of approval notice**

If an approval notice is issued in relation to a proposed action, the holder of the approval notice is taken to be an approval holder of the environmental approval for that action.

## **104 Notice of refusal**

If the Minister refuses an application under section 101, the Minister must give the applicant:

- (a) notice of the Minister's decision; and
- (b) a statement of reasons for the decision.

## **105 Publication of notice and reasons**

(1) The Minister must publish an approval notice issued under this Division and a statement of the reasons for the decision to approve the application as soon as practicable after the approval notice is issued.

(2) The Minister must publish a statement of reasons for a decision under section 101 to refuse an application as soon as practicable after the decision is made.

## **Division 9          Amendment of environmental approval**

### **106          Amendment of environmental approval**

- (1) The Minister may amend an environmental approval:
  - (a) at the request of the approval holder; or
  - (b) on the recommendation of the NT EPA as a result of an environmental impact assessment of a significant variation of an action or strategic proposal – in accordance with the regulations; or
  - (c) if the Minister becomes aware of information that was not available to the Minister at the time of granting the environmental approval and the Minister would have imposed different conditions on the environmental approval if the information had been available; or
  - (d) if, as a result of the monitoring of compliance with or enforcement of this Act or the environmental approval, the Minister considers that the environmental impact of an action under the environmental approval or the approved strategic proposal:
    - (i) is not being appropriately avoided, mitigated or managed; or
    - (ii) is not being appropriately offset by an environmental offset.
- (2) The Minister must make a decision on a request from an approval holder within the required time.
- (3) The Minister must, in making a decision on a request from an approval holder:
  - (a) have regard to the following:
    - (i) the matters set out in Part 2;
    - (ii) the objects of this Act;
    - (iii) the assessment report on the action; and
  - (b) be satisfied that the amendment will not prevent:
    - (i) the significant impacts of the action from being appropriately avoided or mitigated or from being appropriately managed; and



- (ii) any appropriate environmental offsets from being provided for significant residual adverse impacts on the environment that cannot be avoided or mitigated.

- (4) In this section:

**required time** means 60 business days after the Minister receives a request for an amendment from the approval holder.

## **107 Consultation on proposed amendment**

- (1) Before amending an environmental approval at the request of the approval holder, the Minister must:

- (a) consult with the NT EPA; and
- (b) make reasonable efforts to obtain the views of:
  - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
  - (ii) if the amendment is to include a condition that relates to a potential health impact of an action – the Chief Health Officer; and
  - (iii) if the amendment is to include a condition that relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and
- (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).

- (2) Before amending an environmental approval on the Minister's own initiative, the Minister must:

- (a) consult with:
  - (i) the NT EPA; and
  - (ii) the approval holder; and
- (b) make reasonable efforts to obtain the views of:
  - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
  - (ii) if the amendment is to include a condition that relates to a potential health impact of an action – the Chief Health Officer; and

- (iii) if the amendment is to include a condition that relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and
  - (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).
- (3) The required time under section 106(2) for the Minister to make a decision under section 106(1)(a) ceases to run during any period that the Minister carries out a consultation under subsection (1).

### **108 Publication of amended environmental approval**

The Minister must publish the amended environmental approval and a statement of reasons for the amendment as soon as practicable after the environmental approval is amended.

## **Division 10 Revocation or suspension of environmental approval**

### **109 Revocation of environmental approval**

The Minister may revoke an environmental approval:

- (a) if the Minister becomes aware of information that was not available to the Minister at the time of granting the approval and the Minister is satisfied that the approval would not have been granted if the information had been available; or
- (b) if the Minister, as a result of the monitoring of compliance with or enforcement of this Act or the approval or otherwise, is of the opinion that the approval holder is not a fit and proper person to hold the approval; or
- (c) if the Minister, as a result of the monitoring of compliance with or enforcement of this Act or the approval or otherwise, believes on reasonable grounds that:
  - (i) the environmental impacts of an action cannot be appropriately avoided, mitigated or managed; and
  - (ii) an environmental offset is not appropriate; or
- (d) at the request of the approval holder.

### **110 Suspension of approval**

- (1) The Minister may, by written notice to the approval holder, suspend an environmental approval instead of revoking the approval.
- (2) The suspension is to be for a period specified in the notice.

### **111 Show cause process**

- (1) The Minister must not revoke or suspend an environmental approval under section 109 or 110 unless the Minister has first complied with this section.
- (2) The Minister must give written notice (a **show cause notice**) to the approval holder:
  - (a) stating the Minister's intention to revoke or suspend the environmental approval; and
  - (b) asking the approval holder to show cause why the environmental approval should not be revoked or suspended.
- (3) The show cause notice must specify the date by which the approval holder may show cause.
- (4) The date specified in the show cause notice must be not less than 10 business days after the date of the notice.
- (5) The Minister must consider any response given by the approval holder to the show cause notice in making a decision under section 109 or 110.
- (6) This section does not apply to a revocation at the request of the approval holder.

### **112 Notice to statutory decision-makers**

The Minister must give written notice to any statutory decision-maker consulted in relation to an environmental approval of:

- (a) the Minister's intention to revoke or suspend an environmental approval; and
- (b) a decision by the Minister under this Division:
  - (i) to revoke an environmental approval; or
  - (ii) to suspend an environmental approval; or
  - (iii) not to revoke or suspend an environmental approval after a show cause notice is given under section 111.

### **113 Obligations under approval to continue**

- (1) This section applies if an environmental approval for an action is revoked or suspended.
- (2) The person who was the approval holder of the environmental approval must continue to:
  - (a) comply with any obligations under the environmental approval to manage the site to which the approval applies to minimise or remediate the environmental impact of the action; and
  - (b) comply with any obligations under the environmental approval that relate to rehabilitation of the environment.
- (3) The person required to comply with subsection (2) may apply to the Minister to waive the requirement to comply with that subsection.
- (4) The Minister may waive compliance with any of the requirements of subsection (2) if the Minister considers it appropriate to do so.

### **114 Revocation at request of approval holder**

- (1) This section applies if an approval holder requests the Minister to revoke an environmental approval on the basis that all remediation, rehabilitation and closure requirements of the approval have been met.
- (2) The Minister may revoke the environmental approval if the Minister is satisfied that the approval is no longer required because all remediation, rehabilitation and closure requirements of the approval have been met to the satisfaction of the Minister.
- (3) The revocation of an environmental approval under this section does not prevent the issue of a closure notice in relation to any activities under the approval or for the closure of the site.
- (4) The Minister must make a decision on the request within the required time.
- (5) If the Minister proposes to revoke an environmental approval under this section, the Minister must:
  - (a) consult with the NT EPA; and
  - (b) make reasonable efforts to obtain the views of:
    - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and

- (ii) if the approval includes a condition that relates to a potential health impact of an action – the Chief Health Officer; and
  - (iii) if the approval includes a condition that relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and
- (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).
- (6) The required time under subsection (4) for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (5).

- (7) In this section:

***required time*** means 60 business days after the Minister receives the request.

#### **115 Strategic assessment – revocation of approval**

- (1) This section applies if an environmental approval was granted as a result of a strategic assessment.
- (2) The Minister must not revoke the environmental approval at the request of an approval holder unless all approval holders under the approval agree to the revocation.

#### **116 Strategic assessment – revocation or suspension of approval**

- (1) This section applies if:
  - (a) an environmental approval was granted as a result of a strategic assessment; and
  - (b) a person is:
    - (i) the approval holder to whom the environmental approval was granted; or
    - (ii) an approval holder to whom an approval notice has been issued in relation to the environmental approval.
- (2) The Minister may revoke or suspend the entitlement of a person to be an approval holder under that environmental approval.

- (3) Sections 109 to 111 apply to a decision under subsection (2) as if it were a decision to revoke or suspend the environmental approval.
- (4) An action by the Minister under subsection (2) does not affect the entitlement of any other person to be an approval holder under the environmental approval.

**117 Contravention of continuing obligations – environmental offences**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct contravenes the person's obligations under section 113; and
  - (c) the conduct results in significant environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 1.

- (2) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct contravenes the person's obligations under section 113; and
  - (c) the conduct results in material environmental harm and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

- (3) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct contravenes the person's obligations under section 113; and
  - (c) the conduct results in significant environmental harm.

Penalty: environmental offence level 2.

- (4) A person commits an offence if:
  - (a) the person engages in conduct; and

(b) the conduct contravenes the person's obligations under section 113.

Penalty: environmental offence level 3.

- (5) Strict liability applies to subsections (1)(b) and (2)(b).
- (6) An offence against subsection (3) or (4) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **Division 11 Transfer of environmental approval**

### **118 Transfer of environmental approval**

An environmental approval may be transferred with the approval of the Minister.

### **119 Application for approval to transfer**

- (1) The proposed transferee must apply to the Minister to approve the transfer.
- (2) The application must:
  - (a) be in the approved form; and
  - (b) be accompanied by any information required by the Minister to assess the application; and
  - (c) be accompanied by the fee prescribed by regulation.
- (3) In the application the transferee must agree to perform any obligation imposed on the approval holder under this Act or the environmental approval.
- (4) An application cannot be made unless the approval holder consents to the transfer.

**120 Minister may request information**

- (1) The Minister may ask the following persons for information to assist the Minister in assessing the application:
  - (a) the approval holder;
  - (b) the proposed transferee;
  - (c) any other person who the Minister considers may have relevant information.
- (2) If the Minister asks for information under this section, the required time under section 123(2) for the Minister to make a decision ceases to run until the information is provided.

**121 Minister may have regard to certain matters**

The Minister must have regard to the following in deciding whether to approve a transfer of an environmental approval:

- (a) the objects of this Act;
- (b) whether the proposed transferee is a fit and proper person to hold an environmental approval;
- (c) any other matters the Minister considers relevant.

**122 Consultation on transfer**

- (1) Before making a decision on whether to approve or refuse to approve the transfer of an environmental approval or to amend the environmental approval under section 123, the Minister must:
  - (a) consult the NT EPA; and
  - (b) make reasonable efforts to obtain the views of:
    - (i) any statutory decision-maker who the Minister considers may hold views in relation to the matter; and
    - (ii) if the Minister proposes to amend a condition of the environmental approval that relates to a potential health impact of an action – the Chief Health Officer; and
    - (iii) if the Minister proposes to amend a condition that relates to a potential impact of an action on a social or cultural matter that is within the responsibility of a Minister – that Minister; and



- (c) consider any written comments received within the time specified by the Minister from a person or entity referred to in paragraph (a) or (b).
- (2) The Minister must consult with the proposed transferee if the Minister proposes to:
  - (a) amend the environmental approval; or
  - (b) refuse to approve the transfer.
- (3) The required time under section 123(2) for the Minister to make a decision ceases to run during any period that the Minister carries out a consultation under subsection (1) or (2).

### **123 Decision on transfer**

- (1) The Minister may:
  - (a) approve the transfer of an environmental approval; or
  - (b) refuse to approve the transfer of the environmental approval.
- (2) The Minister must make a decision on the application within the required time after the Minister receives the application for approval of the transfer.
- (3) If the Minister approves the transfer of the environmental approval, the Minister may amend the environmental approval.
- (4) The Minister's approval may be subject to a condition that the transfer does not take effect until the transfer of assets or other matters related to the action have occurred.
- (5) Until a transfer of the environmental approval takes effect the approval holder is responsible for performing all obligations in relation to the approval.
- (6) In this section:

***required time*** means 30 business days after the Minister receives the application for approval of the transfer.

### **124 Publication of approval of transfer and reasons**

- (1) The Minister must publish a decision to approve a transfer of an environmental approval under this Division as soon as practicable after the decision is made.

- (2) The Minister must publish a statement of reasons for a decision to approve or refuse to approve a transfer of an environmental approval under this Division.

## **Part 6                    Environmental offsets**

### **125            Environmental offsets framework and guidelines**

- (1) The Minister may establish an environmental offsets framework for the use of environmental offsets under this Act or an Act prescribed by regulation.
- (2) The Minister may, by *Gazette* notice, publish guidelines for the environmental offsets framework.
- (3) The guidelines may provide for:
  - (a) the types of environmental offsets that may be required; and
  - (b) different requirements for different classes of persons; and
  - (c) different requirements for different classes of actions; and
  - (d) different requirements for different areas; and
  - (e) different requirements for different kinds of environmental offsets.

### **126            Environmental offsets register**

- (1) The CEO must keep a public environmental offsets register for this Act.
- (2) The environmental offsets register must be kept in a form determined by the CEO.
- (3) The CEO must record in the environmental offsets register all environmental offsets that are approved under this Act or an Act prescribed by regulation.
- (4) The environmental offsets register must include the information required by regulation for each approved environmental offset.

## **Part 7            Financial provisions**

### **Division 1        Environment protection bonds**

#### **127            Application of Division**

This Division applies if a condition of an environmental approval requires a person to provide an environment protection bond.

#### **128            Purpose of environment protection bond**

The purpose of an environment protection bond is to secure:

- (a) the approval holder's obligation to comply with this Act and the environmental approval; and
- (b) the payment of the reasonable costs and expenses of the Minister or the CEO taking action to prevent, minimise or remediate environmental harm resulting from the action to which the environmental approval applies; and
- (c) the payment of the reasonable costs and expenses of the Minister or the CEO taking action to complete rehabilitation of the site to which the environmental approval applies or any area affected by the action; and
- (d) the payment of the reasonable costs of post-closure reporting and monitoring; and
- (e) the payment of any amount payable to the CEO by the approval holder for anything done by the CEO under this Act in relation to the approval holder's obligations under this Act.

#### **129            Amount of bond**

- (1) The Minister must determine the amount or value of the environment protection bond to be provided.
- (2) In determining the amount or value of an environment protection bond, the Minister may consider:
  - (a) the environmental risks and impacts of the action; and
  - (b) the level of uncertainty in assessing those risks and impacts and the management measures to deal with them.
- (3) The Minister may determine the nature of the environment protection bond to be provided, which may include:
  - (a) cash; or

- (b) a bank guarantee; or
  - (c) any other form of financial accommodation acceptable to the Minister.
- (4) The conditions of an environmental approval may require the provision of an environment protection bond specifying:
- (a) the amount of the bond or a formula for calculating the amount of the bond; and
  - (b) the form of the bond; and
  - (c) the terms on which the bond must be provided.
- (5) The conditions of an environmental approval may provide for the amount of an environment protection bond to be provided to be recalculated at different stages of the action to which the environmental approval applies.
- (6) The Minister must have regard to the matters in subsection (2) in recalculating an amount of environment protection bond under subsection (5).
- (7) The conditions of an environmental approval may require that the availability of an environment protection bond extend beyond the period to which the environmental approval relates to include any period for which post-closure reporting and monitoring are required.
- (8) An environment protection bond must not be imposed on a person for a purpose if a bond or security has been, or is required to be, provided by the person under another Act for the same, or substantially the same, environmental impacts.

**130            Environment protection bond account**

- (1) The Minister must establish an environment protection bond account.
- (2) The account must be a trust account.
- (3) The Minister must ensure that an amount of environment protection bond paid in cash (including by cheque) is paid into the environment protection bond account.
- (4) An amount may only be paid from the environment protection bond account for one of the following purposes:
- (a) for a payment as a result of a claim under section 131;

(b) for a refund of all or any part of the bond.

**131        Claim on bond**

- (1) The Minister or the CEO may make a claim on an environment protection bond for any purpose mentioned in section 128.
- (2) The claim must be made in accordance with the regulations.
- (3) The amount claimed cannot exceed the reasonable costs and expenses of the Minister or the CEO in carrying out any action mentioned in section 128.
- (4) A claim may be made on an environment protection bond after a request is made by the approval holder for the return of the bond.

**132        Unused bond refundable**

- (1) Subject to subsection (2), any amount of an environment protection bond not used for a purpose mentioned in section 128 is refundable if all remediation, rehabilitation and closure requirements of the environmental approval have been completed to the Minister's satisfaction.
- (2) Any amount owing to the Territory by the approval holder under this Act may be deducted from the environment protection bond at the time of the refund of the bond.

**Division 2        Environment protection levy**

**133        Environment protection levy**

- (1) An environment protection levy is established.
- (2) The environment protection levy is a tax that is levied to provide funding for the following purposes:
  - (a) the carrying out of works for the remediation of environmental harm;
  - (b) the carrying out of works for the rehabilitation of the environment;
  - (c) research into the environmental impacts of particular industries;
  - (d) research into the management of the environmental impacts of particular industries;

- (e) other activities relating to protecting or enhancing the environment.

**134        Liability for environment protection levy**

- (1) A person is liable to pay the environment protection levy if the person is in a class of persons prescribed by regulation to be liable to pay the levy.
- (2) An environment protection levy must not be imposed on a person for a purpose if a levy has been, or is required to be, paid by the person under another Act for the same, or substantially the same, environmental impacts.

**135        Amount of levy**

- (1) The amount of environment protection levy to be paid by a person must be determined in accordance with the regulations.
- (2) The regulations may deal with matters relevant to the determination, payment and collection of the environment protection levy.
- (3) The regulations may provide for the amount of the environment protection levy and the method of calculating the levy to be different in relation to different classes of actions, industries or circumstances.
- (4) An environment protection levy paid by a person is not refundable.

**Division 3        Environment protection funds**

**136        Minister may establish environment protection funds**

- (1) The Minister may establish one or more environment protection funds in accordance with the regulations.
- (2) The Minister must, by *Gazette* notice, specify the purposes of each fund.
- (3) The purposes of an environment protection fund may include providing funds for any of the following:
  - (a) actions taken in the event of an environmental emergency;
  - (b) works for the remediation of environmental harm;
  - (c) works for the rehabilitation of the environment;
  - (d) works for the protection of the environment;

- (e) research into the environmental impacts of particular industries;
  - (f) research into the management of the environmental impacts of particular industries;
  - (g) other activities relating to protecting or enhancing the environment.
- (4) Without limiting subsection (1), the Minister may establish separate environment protection funds for different industries.

**137        Payments into environment protection funds**

- (1) The *Gazette* notice establishing an environment protection fund under section 136 must state the kinds of funds that may be paid into the fund.
- (2) The following kinds of funds may be paid into an environment protection fund:
- (a) amounts or a proportion of amounts of environment protection levy payable under this Act;
  - (b) the amounts of any costs recovered under Part 10, Division 2 or Part 11, Division 2;
  - (c) fees or a proportion of fees payable under this Act;
  - (d) amounts or a proportion of any amounts required to be paid to the CEO under this Act;
  - (e) any other amount required to be paid into an environment protection fund under this Act.
- (3) Each environment protection fund must be invested in a manner approved by the Treasurer.
- (4) The proceeds of the investment of an environment protection fund are payable into that fund.

**138        Expenditure from an environment protection fund**

- (1) The Minister must, by *Gazette* notice, determine the purposes for which the money in an environment protection fund may be expended.
- (2) A purpose determined for an environment protection fund:
- (a) must be a purpose specified in section 136(3); and

- (b) may also include the following:
  - (i) the reimbursement of fees paid into the fund;
  - (ii) the reimbursement of any amount paid into the fund in relation to an enforceable undertaking.
- (3) Any expenditure from an environment protection fund must be authorised by the Minister.
- (4) If an environment protection fund includes an amount of levy paid in respect of a particular industry, that amount cannot be expended for the support of another industry unless the other industry is impacted by the particular industry.

**139        Recovery of amounts paid out of fund**

- (1) This section applies if an amount is paid out of an environment protection fund to undertake:
  - (a) actions in the event of an environmental emergency; or
  - (b) works for the remediation of environmental harm; or
  - (c) works for the rehabilitation of the environment; or
  - (d) works for the protection of the environment.
- (2) The CEO may recover the amount expended from the environment protection fund from the person who was responsible for:
  - (a) the environmental emergency; or
  - (b) the environmental harm that required the remediation works;  
or
  - (c) the need for the rehabilitation works; or
  - (d) the action that resulted in the need for environment protection.
- (3) The amount may be recovered in a court of competent jurisdiction as a debt due to the Territory.
- (4) Any amount recovered under this section must be paid into the environment protection fund from which the expenditure was made.



## **Part 8                      Environmental audits, environmental auditors and environmental practitioners**

### **Division 1              Preliminary matters**

#### **140              Relationship of this Part to other provisions**

This Part does not affect the operation of any condition of an environmental approval requiring:

- (a) monitoring or testing; or
- (b) reporting on monitoring or testing.

#### **141              Environmental audit**

An environmental audit is a documented evaluation of an action and its environmental impact (including an evaluation of management practices, systems and plant) for any of the following purposes:

- (a) to provide information to the persons managing the action on compliance with legal requirements, codes of practice and relevant policies relating to the protection of the environment;
- (b) to enable persons to determine whether the way the action is carried out can be improved in order to protect the environment;
- (c) to assess the nature, type, intensity, magnitude and extent of environmental impacts;
- (d) to assess whether environmental impacts have been, or are being, appropriately managed;
- (e) to assess whether measures to minimise or remediate environmental harm or to rehabilitate the environment have been taken or have been effective;
- (f) to assess the effectiveness of the safeguards or standards for the protection of the environment applied or adopted in relation to the action;
- (g) to obtain improved information as to the effectiveness and accuracy of the risk management processes and systems used to identify environmental impacts during the environmental impact assessment process;
- (h) to assess the accuracy of forecasts of the environmental impacts of the action.

## **Division 2      Environmental audit requirements**

### **142      Direction by CEO to carry out environmental audit**

The CEO may direct an approval holder to cause an environmental audit to be carried out by a qualified person if the CEO believes or suspects on reasonable grounds that:

- (a) the approval holder has contravened, or is likely to contravene, a condition of the environmental approval; or
- (b) the environmental impacts that the action authorised by the environmental approval has, has had, or is likely to have are significantly greater than was indicated in the information that was available to the Minister when the environmental approval was granted.

### **143      CEO may appoint qualified person to carry out environmental audit**

The CEO may appoint a qualified person to carry out an environmental audit.

### **144      Environmental audit and report**

- (1) An environmental audit under section 142 or 143 must be carried out to the satisfaction of the CEO.
- (2) The qualified person must provide a report on the environmental audit to the CEO in the manner required by the CEO.

### **145      Contravention of direction – environmental offence**

- (1) A person commits an offence if the person contravenes a direction under section 142.

Penalty:                      environmental offence level 3.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

#### **146 Offence relating to conflict of interest**

- (1) A person commits an offence if the person:
- (a) is a qualified person; and
  - (b) intentionally carries out an environmental audit or part of an environmental audit; and
  - (c) has a conflict of interest and is reckless in relation to that circumstance; and
  - (d) does not have the authorisation of the CEO to engage in the conduct despite the conflict of interest.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a) and (d).

#### **147 Authorisation of audit despite conflict**

The CEO may authorise a qualified person to carry out an environmental audit or a part of an environmental audit despite a conflict of interest if the CEO considers it appropriate to do so in the particular circumstances of the case.

#### **148 Nature of conflict of interest**

- (1) For sections 146 and 147, a person has a **conflict of interest** if the person:
- (a) is an associate of another person who owns or occupies any part of the site to which the audit relates; or
  - (b) has a direct or indirect pecuniary or personal interest in:
    - (i) any part of the site to which the audit relates; or
    - (ii) any action carried out or proposed to be carried out on the site or part of the site to which the audit relates; or
  - (c) has been involved in, or is an associate of another person who has been involved in, an assessment or remediation under this Act of the site to which the audit relates.
- (2) For this section, a person is an **associate** of another person if:
- (a) they are partners; or

- (b) one is a spouse, de facto partner, parent, step-parent, child or stepchild of the other; or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate; or
  - (g) a relationship of a kind prescribed by regulation exists between them; or
  - (h) a chain or relationships can be traced between them under any one or more of paragraphs (a) to (g).
- (3) In this section:

**beneficiary**, of a trust, includes an object of a discretionary trust.

**related body corporate**, see section 9 of the Corporations Act 2001.

#### **149 Qualified person may direct information to be provided**

A qualified person carrying out an environmental audit under section 142 or 143 may direct the person carrying out or proposing to carry out the action being audited to provide all relevant information to the qualified person for carrying out the audit.

#### **150 Declarations in relation to environmental audit reports**

A report of an environmental audit by a qualified person provided to the CEO must be accompanied by:

- (a) a declaration signed by the approval holder or the person who is directed to obtain the audit certifying that the person:
  - (i) has not knowingly provided any false or misleading information to the qualified person; and

- (ii) has provided all relevant information to the qualified person; and
- (b) a declaration signed by the qualified person certifying that:
  - (i) the report is accurate; and
  - (ii) the qualified person has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

**151 Contravention of direction to provide relevant information – environmental offences**

- (1) A person commits an offence if:
- (a) the person is given a direction under section 149; and
  - (b) the person contravenes that direction and is reckless in relation to that result.

Penalty: environmental offence level 2.

- (2) A person commits an offence if:
- (a) the person is given a direction under section 149; and
  - (b) the person contravenes that direction.

Penalty: environmental offence level 3.

- (3) Strict liability applies to subsection (1)(a).
- (4) An offence against subsection (2) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (6) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (5).

**152 Offence if false or misleading information in audit report or missing information**

- (1) A qualified person commits an offence if:
- (a) the qualified person intentionally signs a declaration under section 150(b) in relation to an environmental audit report; and

- (b) the audit report contains false or misleading information or does not contain all relevant information and the qualified person is reckless in relation to that circumstance.

Maximum penalty: 500 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the qualified person when giving the audit report:
  - (a) draws the false or misleading aspect of the document to the CEO's attention; and
  - (b) to the extent to which the qualified person can reasonably do so – gives the CEO the information necessary to remedy the false or misleading aspect of the document.

### **153 Retention and production of audit documentation**

- (1) An approval holder must retain the prescribed documents relating to an environmental audit until the end of the last of the following periods after the audit report was provided to the CEO:
  - (a) 5 years;
  - (b) the period prescribed by regulation for that class of audit;
  - (c) the period (not exceeding 10 years) determined by the CEO in relation to the audit and notified to the approval holder.
- (2) The CEO may direct an approval holder to produce a document that is required to be retained under subsection (1).

### **154 Contravention of direction – environmental offences**

- (1) A person commits an offence if:
  - (a) the person is given a direction under section 153(2); and
  - (b) the person contravenes that direction and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

- (2) A person commits an offence if:
  - (a) the person is given a direction under section 153(2); and
  - (b) the person contravenes that direction.

Penalty: environmental offence level 3.



- (g) reviews by NTCAT of decisions of the CEO relating to registration;
- (h) the keeping of a register of environmental auditors, including by adopting a register or record of environmental auditors kept by another jurisdiction or entity.

#### **Division 4 Registration of environmental practitioners**

##### **157 Offence to represent that registered as environmental practitioner**

- (1) A person commits an offence if:
  - (a) the person recklessly makes a representation that the person is registered as an environmental practitioner under this Act; and
  - (b) the person is not registered under this Act as an environmental practitioner.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(b).

##### **158 Registration of environmental practitioners**

The regulations may provide for matters relating to the registration of persons as environmental practitioners, including the following:

- (a) the grant or renewal of registration, including the qualifications for registration which may include certification by another jurisdiction or entity;
- (b) the information to be provided to the CEO for applications for the grant or renewal of registration;
- (c) application fees and renewal fees;
- (d) conditions of registration;
- (e) the period of registration or renewal of registration;
- (f) suspension or cancellation of registration and disqualification from registration;
- (g) reviews by NTCAT of decisions of the CEO relating to registration;



- (h) the keeping of a register of environmental practitioners, including by adopting a register or record of environmental practitioners kept by another jurisdiction or entity.

## **Part 9            Enforcement**

### **Division 1        Environmental officers**

#### **159            Appointment or authorisation of environmental officers**

- (1) The CEO may appoint or authorise a person as an environmental officer.
- (2) The CEO must not appoint or authorise a person as an environmental officer unless satisfied that the person has the skills, qualifications, training or experience to properly perform the functions of an environmental officer.
- (3) A police officer is an environmental officer for this Act.

#### **160            Identity card**

- (1) The CEO must give an environmental officer appointed or authorised under section 159(1) an identity card stating the person's name and that the person is an environmental officer.
- (2) The identity card must:
  - (a) show a recent photograph of the environmental officer; and
  - (b) show the card's date of issue; and
  - (c) be signed by the environmental officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.
- (4) An environmental officer to whom an identity card is issued who is exercising a power or performing a function under this Act must produce that card for inspection if requested to do so by any person affected by the exercise of the power or the performance of the function.

**161            Offence not to return identity card**

- (1) A person who ceases to be an environmental officer must return the person's identity card to the CEO within 15 business days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**162            Powers of environmental officers: purposes**

- (1) An environmental officer may do anything or cause anything to be done or take any action the environmental officer believes on reasonable grounds is necessary for the purpose of exercising a power or performing a function under this Act.
- (2) Without limiting subsection (1), an environmental officer may exercise the powers set out in this Division for the following purposes:
- (a) to monitor compliance with this Act;
  - (b) to investigate a suspected contravention of this Act.

**163            General powers of environmental officers**

- (1) Subject to section 164, an environmental officer may do any of the following:
- (a) enter any land or premises;
  - (b) move any vehicle;
  - (c) inspect any land or premises and anything on the land or premises;
  - (d) search any land or premises entered and anything found there;
  - (e) take photographs and make sketches or other records of land or premises or things found on land or premises;
  - (f) take photographs of any person on or in land or premises;

- (g) make recordings in any medium, including audio, visual and audio-visual recordings, of land or premises or things found on land or premises;
- (h) inspect and take copies of documents and records;
- (i) seize any documents and any equipment required to access any documents;
- (j) dig up any land;
- (k) operate any equipment;
- (l) bring equipment or materials on to the land or premises and install and maintain equipment or materials;
- (m) measure anything, or take samples of anything on land or premises;
- (n) examine or test any equipment or machinery or other thing;
- (o) require a person to produce an environmental approval, environmental audit report or a class of document prescribed by regulation or a copy of that document for inspection;
- (p) require a relevant person to:
  - (i) provide the person's name, address and date of birth and evidence of these; and
  - (ii) if the relevant person is acting as a member of a partnership – provide the name and address and telephone number of any other partner in the partnership; and
  - (iii) if the relevant person is acting as a member of the committee of management of an unincorporated body – provide the name and address and telephone number of any other member of the committee of management;
- (q) require a person on the land or premises to give the environmental officer reasonable assistance to exercise or perform the environmental officer's powers or functions including:
  - (i) operate any computer or other equipment; and
  - (ii) provide any access or assistance to access any computer or other equipment or any service;

- (r) authorise a person to provide assistance to an environmental officer in the exercise or performance of the environmental officer's powers or functions;
- (s) do any other act or thing necessary for, or incidental to, the exercise of a power mentioned in this Division.

(2) In this section:

**associated person**, of a person, means:

- (a) if the person is a member of a partnership – a partner of the person; or
- (b) if the person is a member of and acting on behalf of an unincorporated body – a member of the committee of management of the body; or
- (c) an employee, agent, licensee, contractor or subcontractor of the person or of a partnership or body mentioned in paragraph (a) or (b).

**relevant person** means:

- (a) a person who is on, or in the vicinity of, the land or premises; or
- (b) a person who the environmental officer reasonably suspects is travelling to or from the land or premises; or
- (c) a person who the environmental officer reasonably suspects is the owner or occupier of the land or premises; or
- (d) a person who the environmental officer reasonably suspects is a person who is under investigation for a suspected contravention of this Act; or
- (e) a person who the environmental officer reasonably suspects is a person who is an associated person of a person mentioned in paragraph (c) or (d).

#### **164      Entry of residential premises**

- (1) The power to enter premises given by section 163 does not apply to residential premises unless:
  - (a) the entry is with the consent of the occupier obtained under subsection (2); or
  - (b) the entry is under a search warrant issued under section 170.

- (2) An environmental officer seeking an occupier's consent to enter residential premises must:
  - (a) show the officer's identity card to the occupier; and
  - (b) give the occupier the reasons why the entry is sought; and
  - (c) inform the occupier that the occupier may refuse to give consent.
- (3) An environmental officer is not entitled to remain on residential premises if the environmental officer does not show the officer's identity card to an occupier of those premises.
- (4) Having entered residential premises, an environmental officer may remain on the premises for as long as is reasonably necessary to enable the officer to perform the officer's functions.
- (5) This section does not affect any powers a police officer may exercise under another law of the Territory.

#### **165        Entry on Aboriginal land**

The power of an environmental officer to enter land or premises may be exercised under this Act, despite:

- (a) the land or premises being Aboriginal land; and
- (b) the officer not holding a permit under the *Aboriginal Land Act 1978* to enter or remain on Aboriginal land.

#### **166        Duties of environmental officer on land or premises**

An environmental officer must take reasonable steps to:

- (a) minimise disruption caused by the entry or inspection of land or premises or the taking of an action specified in section 163; and
- (b) ensure the environmental officer does not remain on land or premises any longer than is reasonably necessary.

#### **167        Duty of environmental officer in relation to seized thing**

- (1) As soon as practicable but within 5 business days after an environmental officer seizes a thing under section 163, the officer must give a receipt for the seized thing to the person from whom it was seized.
- (2) The receipt must describe generally each thing seized and its condition.

- (3) If, for any reason, it is not practicable to comply with subsection (1), the environmental officer must:
  - (a) leave the receipt at the place of seizure; and
  - (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.
- (4) The environmental officer must allow a person who would be entitled to the seized thing if it were not in the environmental officer's possession to inspect it and, if it is a document, to take extracts from it or make copies of it.
- (5) The environmental officer must return the seized thing to its owner at the end of the later of:
  - (a) 3 years; or
  - (b) if a prosecution for an offence involving the seized thing is started within the 3 years – 12 months after the end of the prosecution for the offence and any appeal from the prosecution.
- (6) Despite subsection (5), the environmental officer must return the seized thing to its owner immediately the environmental officer stops being satisfied its retention as evidence is necessary.
- (7) However, the environmental officer may keep the seized thing if the environmental officer believes on reasonable grounds that it is necessary to continue to keep it to prevent its use in committing an offence.
- (8) An environmental officer must give written notice to the owner of a seized thing as soon as practicable if the environmental officer decides under subsection (7) to keep the thing.

## **168        Forfeiture of seized thing**

- (1) Despite section 167, if the owner of the seized thing is convicted of an offence for which the thing was retained as evidence, the court may order its forfeiture to the Territory.
- (2) Despite section 167, if the court makes an order against the owner of a seized thing under Part 10, the court may order its forfeiture to the Territory.
- (3) The forfeited thing becomes the property of the Territory and may be destroyed or disposed of as directed by the CEO.
- (4) This section does not limit the court's powers under any other law.

**169            Offence to contravene requirement**

- (1) A person commits an offence if:
- (a) the person has been required to do a thing under section 163(1); and
  - (b) the person contravenes the requirement.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**170            Application for and issue of search warrant**

- (1) An environmental officer may apply to a judicial officer for a search warrant to enter land or premises:
- (a) by appearing in person before the judicial officer; or
  - (b) if it is not practicable to appear in person – by telephone, radio or other means of communication.
- (2) If the judicial officer is satisfied that there are reasonable grounds to permit the environmental officer to enter the land or premises, the judicial officer may issue a warrant directed to the environmental officer.
- (3) If the judicial officer issues a warrant on an application made under subsection (1)(b), the judicial officer must:
- (a) complete and sign the warrant (the **original warrant**); and
  - (b) record on the original warrant the reasons for issuing it; and
  - (c) inform the environmental officer by telephone, radio or other means of communication of its terms.
- (4) When informed of the terms of the warrant under subsection (3)(c), the environmental officer must as soon as practicable:
- (a) complete 2 copies of the form of warrant in the terms provided by the judicial officer; and

- (b) write on each copy the name of the judicial officer and the date and time of the issue of the original warrant; and
  - (c) forward one copy to the judicial officer.
- (5) The environmental officer may use the remaining copy of the warrant to exercise the powers granted by the original warrant.
- (6) If the judicial officer is satisfied, after comparing the forwarded copy with the original warrant, that the copy is in substance identical to the original warrant, the judicial officer must certify the copy as being in substance identical to the original warrant.
- (7) In this section:

***judicial officer*** means any of the following:

- (a) a Supreme Court Judge;
- (b) an Associate Judge;
- (c) a Local Court Judge.

#### **171        Effect and term of search warrant**

- (1) A search warrant permits the environmental officer to whom it is directed, and any other environmental officer, to:
- (a) enter the land or premises specified in the warrant; and
  - (b) exercise the powers of the environmental officer under this Act in relation to the land or premises.
- (2) A warrant remains in force for 30 business days from its date of issue.

#### **172        Directions by environmental officer**

- (1) An environmental officer may issue a direction to a person to do any of the following:
- (a) take an action to prevent, minimise, manage or remediate any environmental harm by the method, and within the time, specified in the direction;
  - (b) cease taking any action that may impact on the environment;
  - (c) within the time specified in the direction:
    - (i) take photographs and make sketches or other records of land or premises or things found on land or premises; or



- (ii) take photographs of any person on land or premises; or
  - (iii) make recordings in any medium, including audio, visual and audio-visual recordings, of land or premises or things found on land or premises; or
  - (iv) inspect and take copies of documents and records; or
  - (v) measure anything, or take samples of anything on land or premises; or
  - (vi) provide the photographs, sketches, records, recordings, documents, measurements or samples mentioned in subparagraphs (i) to (v) to the environmental officer or a person nominated by the environmental officer for analysis.
- (2) A direction must not be inconsistent with this Act or any relevant environmental approval.
- (3) A direction may be given orally but must be confirmed by written notice to the person as soon as practicable.
- (4) In this section:

***land or premises*** means land or premises (including residential premises) owned, occupied or managed by the approval holder.

### **173        Offence to contravene direction**

- (1) A person commits an offence if:
- (a) the person has been directed to do a thing under section 172(1); and
  - (b) the person contravenes the direction.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).



## **Division 2            Environment protection notices**

### **176            Environment protection notice – purpose and issue**

The CEO may issue an environment protection notice to any person under this Division for the purpose of securing compliance with:

- (a) an environmental approval; or
- (b) a requirement prescribed by regulation.

### **177            Content of environment protection notice**

- (1) Subject to section 183, an environment protection notice must be:
  - (a) in writing; and
  - (b) given to the person to whom it is issued.
- (2) The environment protection notice must:
  - (a) specify the person to whom it is issued, whether by name or a description sufficient to identify the person; and
  - (b) if the notice is issued for the purpose of securing compliance with the conditions of an environmental approval:
    - (i) state that purpose; and
    - (ii) specify the conditions to be complied with; and
  - (c) if the notice is issued for the purpose of securing compliance with a requirement prescribed by regulation:
    - (i) state that purpose; and
    - (ii) specify the requirement.
- (3) The environment protection notice must state that the person may apply to NTCAT for review of the decision to issue the notice.
- (4) An environment protection notice is binding on each person to whom it is issued.

## 178        **Requirements of environment protection notices**

- (1) Subject to sections 182 and 183, an environment protection notice may impose any requirement reasonably required for the purpose for which the notice is issued, including one or more of the following:
  - (a) a requirement (a **cease work requirement**) that the person discontinue, or not commence, a specified activity or specified part of an activity;
  - (b) a requirement that the person not undertake or continue a specified activity except at specified times or subject to specified conditions;
  - (c) a requirement that the person undertake a specified activity within a specified period or at specified times or in specified circumstances;
  - (d) a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the CEO, a plan to prevent, minimise, manage or remediate environmental harm;
  - (e) a requirement that the person comply with the plan mentioned in paragraph (d);
  - (f) a requirement that the person undertake specified tests or environmental monitoring;
  - (g) a requirement that the person submit to the CEO specified testing, monitoring or compliance reports;
  - (h) a requirement that the person appoint or engage a person in a specified class of qualified person to prepare a plan or report or undertake tests or monitoring required by the notice;
  - (i) a requirement prescribed by regulation.
- (2) An environment protection notice that includes a cease work requirement remains in force until it is revoked by the CEO under section 184.
- (3) An application to NTCAT for review of an environment protection notice that imposes a requirement mentioned in subsection (1)(a), (b) or (c) or a requirement prescribed by regulation does not stay the operation of the notice.

**179            Environment protection notice may permit certain acts or omissions**

- (1) The CEO may include in an environment protection notice a requirement for an act or omission that might otherwise constitute a contravention of this Act if the CEO considers that it is reasonably necessary in the circumstances to do so.
- (2) A person incurs no liability to a penalty under this Act for an act or omission made in compliance with a requirement mentioned in subsection (1).

**180            Effect of environment protection notice on need for statutory authorisation**

- (1) This section applies if:
  - (a) a person is required by an environment protection notice to carry out an action; and
  - (b) a statutory authorisation of a kind prescribed by regulation is required for that action.
- (2) The person may carry out the action without obtaining the statutory authorisation.
- (3) A person incurs no liability to a penalty under the Act governing the statutory authorisation for complying with subsection (2).
- (4) Subsections (2) and (3) apply despite anything to the contrary in the Act governing the statutory authorisation.

**181            Notice to prescribed statutory decision-maker of proposed notice**

- (1) This section applies if:
  - (a) the CEO proposes to:
    - (i) issue or vary an environment protection notice requiring a person to carry out an action; or
    - (ii) issue a notice confirming an emergency environment protection notice under section 183(6) requiring a person to carry out an action; and
  - (b) but for section 180, a statutory authorisation would be required for that action.

- (2) The CEO must:
  - (a) give notice of the proposed environment protection notice or the proposed variation or confirmation of an environment protection notice to the statutory decision-maker responsible for granting the statutory authorisation; and
  - (b) consider any written comments received within the time specified in the notice from the statutory decision-maker.
- (3) The notice must be given before the environment protection notice is issued or varied or confirmed, as the case requires.
- (4) The time specified in the notice must be:
  - (a) for a notice under section 183(6) to confirm an emergency environment protection notice – at least 24 hours; or
  - (b) otherwise – at least 14 business days.
- (5) This section does not apply to the issue of an emergency environment protection notice.

## **182        Emergency environment protection notice issued by CEO**

- (1) The CEO may issue an emergency environment protection notice to a person if:
  - (a) an environmental approval has been granted for an action; and
  - (b) the CEO believes on reasonable grounds that the action is causing significant environmental harm; and
  - (c) the CEO believes on reasonable grounds that urgent action is required for the protection of the environment and to meet the objects of this Act; and
  - (d) the CEO believes on reasonable grounds that a ground specified in section 109 for revocation of an environmental approval exists.
- (2) The emergency environment protection notice may impose any requirements mentioned in section 178(1) that are reasonably required for the protection of the environment.
- (3) An application to NTCAT for review of an emergency environment protection notice that imposes a requirement mentioned in section 178(1)(a), (b) or (c) or a requirement prescribed by regulation does not stay the operation of the notice.

- (4) An emergency environment protection notice issued to a person under this section ceases to have effect at the end of 10 business days after it is issued unless before the end of that period:
  - (a) the Minister commences to amend the environmental approval under section 106; or
  - (b) a show cause notice is issued to the person under section 111.
- (5) If subsection (4)(a) or (b) applies, the emergency environment protection notice continues in effect until:
  - (a) the process of amendment of the environmental approval under section 106 is completed; or
  - (b) the show cause process is completed under section 111; or
  - (c) the CEO revokes the emergency environment protection notice under section 184.

**183            Emergency environment protection notice issued by environmental officer**

- (1) An environmental officer may issue an emergency environment protection notice to a person if the officer considers that urgent action is required for the protection of the environment.
- (2) The emergency environment protection notice may impose any requirements mentioned in section 178(1) that are reasonably required for the protection of the environment.
- (3) An emergency environment protection notice may be given to the person orally in accordance with the regulations.
- (4) If an emergency environment protection notice is given to a person orally under this section, the person to whom it is issued must be advised immediately of the person's right to apply to NTCAT for review of the notice.
- (5) An application to NTCAT for review of an emergency environment protection notice that imposes a requirement mentioned in section 178(1)(a), (b) or (c) or a requirement prescribed by regulation does not stay the operation of the notice.
- (6) An emergency environment protection notice issued to a person under this section ceases to have effect at the end of 72 hours from the time it is issued unless the notice is confirmed by written notice issued by the CEO and given to the person.

**184            Variation or revocation of environment protection notice**

The CEO may vary or revoke an environment protection notice by written notice served on each person bound by the environment protection notice.

**185            Copy of environment protection notice may be lodged with Registrar-General**

- (1) The CEO may lodge with the Registrar-General a copy of any environment protection notice issued or confirmed by the CEO in relation to land.
- (2) The CEO must lodge with the copy of the notice any additional information required to identify the land to which the notice relates.
- (3) The Registrar-General must record an environment protection notice, a copy of which is lodged under subsection (1), in the land register.

**186            Recorded notice applies to owners and occupiers of land**

- (1) This section applies if an environment protection notice relating to land is recorded under section 185(3).
- (2) If the environment protection notice was issued to the owner or occupier of the land to which it applies, the notice is binding on each owner or occupier for the time being of the land.

**187            Notice to owners and occupiers of land**

- (1) This section applies if an environment protection notice relating to land is recorded under section 185(3).
- (2) The CEO must, as soon as practicable after the environment protection notice is recorded, take all reasonable steps to give written notice to each owner and occupier of the land who is bound by the environment protection notice of:
  - (a) the recording of the environment protection notice; and
  - (b) the obligations of the owner or occupier under sections 188 and 189.
- (3) The notice given under subsection (2) must state that the owner or occupier may apply to NTCAT for review of the decision to lodge a copy of the environment protection notice with the Registrar-General under section 185.



- (4) If all reasonable steps have been taken under subsection (2) to notify an occupier of land, the notice may be given by addressing it to "the occupier" and posting it to, or leaving it on, the land.
- (5) A notice is not required to be given under this section to an owner or occupier of land to whom the environment protection notice was issued under this Division.

**188        Notice by owner or occupier to CEO**

- (1) This section applies if an environment protection notice relating to land is recorded under section 185.
- (2) A person who is or was bound by the environment protection notice as the owner or occupier of the land must give written notice to the CEO as soon as practicable after the person ceases to own or occupy the land.
- (3) The notice must state the name and address of the new owner or occupier of the land.

**189        Offence to contravene notice requirement**

- (1) A person commits an offence if:
  - (a) the person is required to give a notice to the CEO under section 188; and
  - (b) the person contravenes that requirement.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**190        Cancellation of recording of environment protection notice**

- (1) The CEO may apply to the Registrar-General to cancel the recording of an environment protection notice in relation to land in the land register.

- (2) The CEO must apply to the Registrar-General to cancel the recording of an environment protection notice in relation to land in the land register:
  - (a) on revocation of the notice; or
  - (b) on full compliance with the requirements of the notice; or
  - (c) at the direction of NTCAT on an application to review the decision to lodge a copy of the notice with the Registrar-General.
- (3) The CEO must lodge with the application any additional information required to identify the land to which the application relates.
- (4) On receipt of an application under subsection (1) or (2), the Registrar-General must cancel the recording of the environment protection notice in the land register.

**191            Contravention of environment protection notice –  
                  environmental offences**

- (1) A person commits an offence if:
  - (a) the person is bound by an environment protection notice; and
  - (b) the person contravenes the notice and is reckless in relation to that result; and
  - (c) the contravention results in significant environmental harm and the person is reckless in relation to that result.

Penalty:                            environmental offence level 1.

- (2) A person commits an offence if:
  - (a) the person is bound by an environment protection notice; and
  - (b) the person contravenes the notice and is reckless in relation to that result; and
  - (c) the contravention results in material environmental harm and the person is reckless in relation to that result.

Penalty:                            environmental offence level 2.

- (3) A person commits an offence if:
  - (a) the person is bound by an environment protection notice; and
  - (b) the person contravenes the notice; and

(c) the contravention results in significant environmental harm.

Penalty:                            environmental offence level 2.

(4) A person commits an offence if:

(a) the person is bound by an environment protection notice; and

(b) the person contravenes the notice.

Penalty:                            environmental offence level 3.

(5) Strict liability applies to subsections (1)(a) and (2)(a).

(6) An offence against subsection (3) or (4) is an offence of strict liability.

(7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **192        Obstruct compliance with notice – environmental offence**

(1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct obstructs compliance by another person with an environment protection notice and the person is reckless in relation to that result.

Penalty:                            environmental offence level 2.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(3) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (2).

## **Division 3        Stop work notices**

### **193        Purpose of stop work notice**

The purpose of a stop work notice is:

(a) to prevent or minimise the environmental impact of an action;  
or

- (b) to minimise any financial benefit to a proponent of proceeding with an action without an environmental approval.

**194        NT EPA may issue stop work notice**

- (1) The NT EPA may issue a stop work notice to a proponent or approval holder who has referred an action or significant variation or is required to refer an action or significant variation, to the NT EPA under Part 4, Division 3.
- (2) The stop work notice may direct the proponent or approval holder to stop taking the action while:
  - (a) a decision is being made as to whether the action or significant variation requires an environmental impact assessment; and
  - (b) if the NT EPA considers it necessary – the environmental impact assessment and environmental approval process relating to the action or significant variation is completed.
- (3) A stop work notice may be issued at any stage in the environmental impact assessment and environmental approval process for an action or significant variation if the proponent or approval holder has commenced the action.
- (4) A stop work notice may be issued if the NT EPA has issued a call-in notice to the proponent or approval holder under Part 4, Division 3, Subdivision 3 if the action called-in has commenced.

**195        Requirements of stop work notice**

A stop work notice may impose any conditions the NT EPA considers necessary:

- (a) to prevent or minimise the environmental impact of the action; or
- (b) to provide for the remediation of environmental harm or the rehabilitation of the site of the action; or
- (c) to minimise any financial benefit to a proponent of proceeding with an action without an environmental approval.

**196        Stop work notice where proponent contravenes call-in notice**

- (1) This section applies to a stop work notice that is issued as a consequence of a proponent or approval holder contravening a call-in notice in relation to an action.

- (2) The stop work notice remains in force until:
- (a) the last of the following occurs:
    - (i) the proponent or approval holder provides any information required under the regulations in relation to the call-in notice;
    - (ii) the NT EPA has made a determination as to whether or not an environmental impact assessment is required;
    - (iii) if an environmental impact assessment is required – the completion of the environmental impact assessment and environmental approval process; or
  - (b) the NT EPA revokes the stop work notice.

**197       Stop work notice may be issued even if other statutory authorisation issued**

The NT EPA may issue a stop work notice in relation to an action even if a relevant statutory decision-maker has issued a statutory authorisation for the action.

**198       Contravention of stop work notice – environmental offences**

- (1) A person commits an offence if:
- (a) the person has been issued with a stop work notice; and
  - (b) the person contravenes the notice and is reckless in relation to that result; and
  - (c) the contravention results in significant environmental harm and the person is reckless in relation to that result.

Penalty:                            environmental offence level 1.

- (2) A person commits an offence if:
- (a) the person has been issued with a stop work notice; and
  - (b) the person contravenes the notice and is reckless in relation to that result; and
  - (c) the contravention results in material environmental harm and the person is reckless in relation to that result.

Penalty:                            environmental offence level 2.

- (3) A person commits an offence if:
- (a) the person has been issued with a stop work notice; and
  - (b) the person contravenes the notice; and
  - (c) the contravention results in significant environmental harm.

Penalty:                            environmental offence level 2.

- (4) A person commits an offence if:
- (a) the person has been issued with a stop work notice; and
  - (b) the person contravenes the notice.

Penalty:                            environmental offence level 3.

- (5) Strict liability applies to subsections (1)(a) and (2)(a).
- (6) An offence against subsection (3) or (4) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **Division 4            Closure notices**

### **199            Closure notice**

- (1) This section applies to a site to which an environmental approval applies.
- (2) The Minister may issue a closure notice in relation to the site if the Minister considers, on reasonable grounds, that ongoing investigation, monitoring or management of the site is or will be required following the expiry or revocation of the environmental approval, as a result of anything done or that has occurred at the site before the expiry or revocation.
- (3) If the environmental approval is in force, the closure notice must be issued to the approval holder.

- (4) If the environmental approval is not still in force, the closure notice must be issued to:
  - (a) the person who was the approval holder immediately before the environmental approval expired or was revoked; or
  - (b) the owner or occupier of the site.
- (5) A closure notice must:
  - (a) be in writing; and
  - (b) be given to each person to whom it is issued.
- (6) A copy of the closure notice must be given to the owner or occupier of the site unless the closure notice is issued to that person under subsection (4).

## **200 Contents of closure notice**

- (1) A closure notice may require any person bound by the notice to do any one or more of the following in relation to the site to which the notice applies:
  - (a) take specified investigation and monitoring action;
  - (b) prepare a management plan;
  - (c) take specified management action;
  - (d) report on specified matters in a specified form at specified times;
  - (e) arrange for:
    - (i) an environmental audit of the site to be carried out by a qualified person; and
    - (ii) a report to be given to the Minister on the findings of the audit;
  - (f) appoint or engage a person in a specified class of qualified person to undertake an activity mentioned in paragraphs (a) to (d).
- (2) A closure notice must specify the following:
  - (a) the name and address of the person to whom it is issued;
  - (b) the reason for which it is issued;

- (c) a description of the site and the location of the site sufficient to identify both;
- (d) the things mentioned in subsection (1) that are required to be done;
- (e) if applicable – the time within which the things are to be done.

**201            Effect of closure notice**

A closure notice binds each person to whom it is issued.

**202            Copy of closure notice may be lodged with Registrar-General**

- (1) The CEO may lodge with the Registrar-General a copy of any closure notice issued by the Minister in relation to land.
- (2) The CEO must lodge with the copy of the notice any additional information required to identify the land to which the notice relates.
- (3) The Registrar-General must record a closure notice, a copy of which is lodged under subsection (1), in the land register.

**203            Recorded notice applies to owners and occupiers of land**

- (1) This section applies if a closure notice relating to land is recorded under section 202(3).
- (2) If the closure notice was issued to the owner or occupier of the land to which it applies, the notice is binding on each owner or occupier for the time being of the land.

**204            Notice to owners and occupiers of land**

- (1) This section applies if a closure notice relating to land is recorded under section 202(3).
- (2) The CEO must, as soon as practicable after the notice is recorded, take all reasonable steps to give written notice to each owner and occupier of the land who is bound by the closure notice of:
  - (a) the recording of the closure notice; and
  - (b) the obligations of the owner or occupier under sections 205 and 206.
- (3) The notice given under subsection (2) must state that the owner or occupier may apply to NTCAT for review of the decision to lodge a copy of the closure notice with the Registrar-General under section 202.



- (4) If all reasonable steps have been taken under subsection (2) to notify an occupier of land, the notice may be given by addressing it to "the occupier" and posting it to, or leaving it on, the land.
- (5) A notice is not required to be given under this section to an owner or occupier of land to whom the closure notice was issued under section 199.

#### **205        Notice by owner or occupier to CEO**

- (1) This section applies if a closure notice relating to land is recorded under section 202(3).
- (2) A person who is or was bound by the closure notice as the owner or occupier of the land must give written notice to the CEO as soon as practicable after the person ceases to own or occupy the land.
- (3) The notice must state the name and address of the new owner or occupier of the land.

#### **206        Offence to contravene notice requirement**

- (1) A person commits an offence if:
  - (a) the person is required to give a notice to the CEO under section 205; and
  - (b) the person contravenes that requirement.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

#### **207        Cancellation of recording of closure notice**

- (1) The CEO may apply to the Registrar-General to cancel the recording of a closure notice in relation to land in the land register.
- (2) The CEO must apply to the Registrar-General to cancel the recording of a closure notice in relation to land in the land register:
  - (a) on revocation of the notice; or
  - (b) on full compliance with the requirements of the notice; or

- (c) at the direction of NTCAT on an application for review of the decision to lodge a copy of the notice with the Registrar-General.
- (3) The CEO must lodge with the application any additional information required to identify the land to which the application relates.
- (4) On receipt of an application under subsection (1) or (2), the Registrar-General must cancel the recording of the closure notice in the land register.

**208            Contravention of closure notice – environmental offence**

- (1) A person commits an offence if:
  - (a) the person is bound by a closure notice; and
  - (b) the person contravenes the notice.

Penalty:                    environmental offence level 3.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**209            Obstruct compliance with closure notice – environmental offence**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct obstructs compliance by another person with a closure notice and the person is reckless in relation to that result.

Penalty:                    environmental offence level 4.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (3) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (2).

**210            Closure notice not complied with**

If an action required by a closure notice has not been taken, the CEO may:

- (a) cause that action to be taken; and
- (b) recover the cost of taking that action from any person bound by the notice in any court of competent jurisdiction as a debt due to the Territory.

**Division 5            Closure certificates**

**211            Criteria for closure certificate**

- (1) The Minister may, by *Gazette* notice, determine criteria to be met by an approval holder before a closure certificate can be issued in relation to an action.
- (2) The Minister may determine different criteria for different classes of action.
- (3) This section does not prevent the Minister from imposing different or additional criteria in relation to a particular closure certificate.

**212            Application for closure certificate**

- (1) An approval holder of an environmental approval for an action may apply to the Minister for a closure certificate for the action if the approval holder:
  - (a) has completed the rehabilitation and remediation requirements of the environmental approval; and
  - (b) has completed the closure requirements of the environmental approval; and
  - (c) intends to:
    - (i) sell the land; or
    - (ii) transfer the land to another person; or
    - (iii) return the land to the owner of the land; or
    - (iv) transfer the land to the Territory or a local government of the Territory.

- (2) An application must:
  - (a) be in the form approved by the Minister; and
  - (b) contain the information prescribed by regulation.
- (3) The Minister may require an applicant to provide any further information required by the Minister to determine the application.
- (4) An application may be made for the issue of a closure certificate in relation to an action even if a determination has not been made under section 211 in relation to that class of action.

### **213        Issue of closure certificate**

The Minister may issue the closure certificate to the approval holder if the Minister is satisfied that:

- (a) all rehabilitation and remediation requirements in relation to the action have been completed in accordance with this Act and the environmental approval; and
- (b) the approval holder has completed the closure requirements of the environmental approval; and
- (c) the approval holder has complied with any requirements of section 212.

### **214        Effect of closure certificate**

If a closure certificate is issued:

- (a) the approval holder ceases to be liable for any future environmental impact associated with the former use of the land; and
- (b) the liability for the future environmental impact associated with the former use of the land becomes a liability of the Territory.

## **Division 6        Enforceable undertakings**

### **215        CEO may accept enforceable undertaking**

- (1) The CEO may accept an enforceable undertaking made by a proponent of an action or an approval holder:
  - (a) to carry out specified remediation or rehabilitation work to rectify environmental harm resulting from an action taken by the proponent or the approval holder that is allegedly in contravention of this Act or an environmental approval; or

- (b) to do any other specified act or thing approved by the CEO.
- (2) An enforceable undertaking must be in writing and signed by the CEO and the proponent or the approval holder.
- (3) An enforceable undertaking may require the proponent or approval holder to publish notice of the alleged contravention and any act or thing done by the proponent or the approval holder.
- (4) Without limiting subsection (1), the CEO may accept an enforceable undertaking when any criminal or civil proceedings under this Act are completed (including any appeal).

## **216        Enforcement orders**

- (1) The CEO may apply to the court for an enforcement order if the CEO considers that a proponent or an approval holder has contravened an enforceable undertaking accepted by the CEO.
- (2) The court may make any of the following enforcement orders if the court is satisfied that the proponent or the approval holder has contravened an enforceable undertaking:
  - (a) an order directing the proponent or the approval holder to comply with the undertaking;
  - (b) an order directing the proponent or the approval holder to do any specified act or thing for the purpose of complying with the enforceable undertaking;
  - (c) an order directing the proponent or the approval holder to do any specified act or thing to minimise environmental harm resulting from the contravention of the enforceable undertaking;
  - (d) an order that the proponent or the approval holder pay an amount to the CEO for any costs reasonably incurred by the CEO in taking action to minimise environmental harm resulting from the contravention of the enforceable undertaking, including any investigation, legal or court costs;
  - (e) an order that the proponent or the approval holder pay an amount in compensation to any other person who has suffered loss or damage as a result of the contravention of the enforceable undertaking;
  - (f) an order revoking the enforceable undertaking;
  - (g) any other order the court considers appropriate in the circumstances.

**217 CEO may do specified acts or things**

- (1) The CEO may do any act or thing specified in an enforcement order if the proponent or the approval holder contravenes the order.
- (2) The CEO must not do the specified act or thing unless:
  - (a) the CEO gives the proponent or the approval holder written notice that the CEO intends to do the specified act or thing; and
  - (b) the CEO invites the proponent or the approval holder to provide either of the following within the specified response period:
    - (i) proof that satisfies the CEO that the proponent or the approval holder has done the specified act or thing;
    - (ii) reasons that satisfy the CEO that the proponent or the approval holder will do the specified act or thing within the specified action period; and
  - (c) the proponent or the approval holder does not within the specified response period:
    - (i) provide the required proof; or
    - (ii) satisfy the CEO that the proponent or the approval holder will do the specified act or thing within the specified action period.
- (3) In doing a specified act or thing, the CEO may:
  - (a) do anything that is necessary or expedient to be done for that purpose; and
  - (b) publish notice that the proponent or the approval holder has contravened the enforcement order.
- (4) The CEO may recover any costs reasonably incurred in doing a specified act or thing under this section from the proponent or the approval holder in a court of competent jurisdiction as a debt due to the Territory.
- (5) The CEO may, in writing, authorise another person to exercise a power or perform a function under subsections (1) to (4) on the CEO's behalf.

(6) If a person is authorised to exercise a power or perform a function under subsection (5), anything done by the person in the exercise of the power or the performance of the function has the same effect as if it had been done by the CEO.

(7) In this section:

***specified action period***, in relation to a notice under subsection (2), means the period (being not less than 10 business days) specified as the action period in the notice.

***specified response period***, in relation to a notice under subsection (2), means the period (being not less than 10 business days) specified as the response period in the notice.

**218        Withdrawal or variation of enforceable undertaking by proponent or approval holder**

(1) A proponent or an approval holder may withdraw or vary an enforceable undertaking accepted by the CEO with the consent of the CEO.

(2) An enforceable undertaking is revoked on the withdrawal of the undertaking.

**219        Withdrawal of acceptance by CEO of enforceable undertaking**

(1) The CEO may withdraw the CEO's acceptance of an enforceable undertaking if the CEO considers it is no longer in the interests of the Territory to accept the undertaking.

(2) The CEO must not withdraw the acceptance of an enforceable undertaking unless the CEO:

(a) gives notice to the proponent or the approval holder of the intention to withdraw the acceptance; and

(b) gives the proponent or the approval holder the opportunity to make submissions to the CEO within the time (being not less than 10 business days) specified in the notice; and

(c) considers any submissions made by the proponent or the approval holder within the time specified in the notice.

(3) An enforceable undertaking is revoked on the withdrawal of the CEO's acceptance.

**220            No criminal proceedings while enforceable undertaking is in force**

If the CEO accepts an enforceable undertaking in relation to an alleged contravention of this Act or an environmental approval, the CEO must not commence a criminal proceeding for an offence that is constituted by the alleged contravention while the enforceable undertaking is in force.

**221            Proceedings following revocation of enforceable undertaking**

If an enforceable undertaking in relation to an alleged contravention of this Act is revoked under this Division before the CEO is satisfied that the enforceable undertaking has been complied with, the CEO may commence a criminal proceeding for an offence that is constituted by the alleged contravention.

**222            No further proceedings if enforceable undertaking complied with**

If the CEO is satisfied that an enforceable undertaking in relation to an alleged contravention of this Act has been complied with, the CEO must not commence a criminal proceeding for an offence that is constituted by the alleged contravention.

**Division 7            Emergency authorisations**

**223            Emergency authorisations**

- (1) The CEO may, by written notice, issue an emergency authorisation to a person to authorise an act or omission that might otherwise constitute a contravention of this Act or an environmental approval if the CEO is satisfied that:
  - (a) urgent circumstances exist; and
  - (b) the act or omission is justified:
    - (i) by the need to protect the environment; or
    - (ii) by the need to protect critical public infrastructure; or
    - (iii) otherwise in the circumstances; and
  - (c) unless the CEO waives this requirement – the person has paid the fee prescribed by regulation.



- (2) In determining whether urgent circumstances exist, the CEO may take into account whether the circumstances arose because the person contravened the duties and obligations placed on the person under this Act or the environmental approval.
- (3) An emergency authorisation may be issued subject to any conditions that the CEO considers appropriate and specifies in the authorisation.
- (4) A person is not liable for an offence against this Act relating to an act or omission that is authorised under this section.
- (5) A person who would, but for an emergency authorisation, have contravened a provision of this Act is, despite the authorisation, taken to have contravened that provision for:
  - (a) any proceedings under Part 10 in relation to the contravention; and
  - (b) the issuing or enforcement of an environment protection notice in relation to the contravention.
- (6) In this section:

***critical public infrastructure*** means infrastructure for the public or for use by the public including roads, dams and bridges.

## **Division 8            Duty to notify incidents**

### **224            Application of Division**

This Division applies if:

- (a) an incident occurs or has occurred at a site at which:
  - (i) an action is being carried out under an environmental approval; or
  - (ii) a proposed action is undergoing environmental impact assessment; and
- (b) that incident causes or threatens material environmental harm or significant environmental harm.

**225            Duty to notify CEO of incidents**

- (1) A specified person who observes or becomes aware of the incident must notify the CEO of the incident and all prescribed information about the incident:
- (a) as soon as practicable (and in any case within 24 hours) after the person observes or becomes aware of the incident; and
  - (b) in accordance with section 226.
- (2) In this section:

***specified person*** means any of the following:

- (a) the approval holder for the action;
- (b) a qualified person who is carrying out an environmental audit of the site;
- (c) an owner of the site;
- (d) an occupier of the site.

**226            Manner and form of notice**

A notice of an incident given under this Division must comply with the requirements prescribed by regulation.

**227            Incidents not required to be reported**

- (1) A specified person mentioned in section 225 is not required to notify an incident under this Division if the person is aware that the incident has already come to the notice of the CEO.
- (2) A person is not required to notify an incident under this Division if the incident is an ordinary result of an action required to be taken to comply with an environmental approval or another requirement of this Act.

**228            Failure to notify incident – environmental offences**

- (1) A person commits an offence if:
- (a) an incident occurs in the course of carrying out an action; and
  - (b) the incident results in significant environmental harm; and
  - (c) the person:
    - (i) is an approval holder for the action; or

- (ii) is carrying out an environmental audit of a site at which the incident is occurring or has occurred; and
- (d) the person intentionally fails to notify the CEO of the incident; and
- (e) the failure to notify the CEO of the incident results in a contravention of section 225 and the person is reckless in relation to that result.

Penalty: environmental offence level 2.

(2) A person commits an offence if:

- (a) an incident occurs in the course of carrying out an action; and
- (b) the incident results in material environmental harm; and
- (c) the person is an approval holder for the action; and
- (d) the person intentionally fails to notify the CEO of the incident; and
- (e) the failure to notify the CEO of the incident results in a contravention of section 225 and the person is reckless in relation to that result.

Penalty: environmental offence level 3.

(3) A person commits an offence if:

- (a) an incident occurs in the course of carrying out an action; and
- (b) the incident results in significant environmental harm; and
- (c) the person:
  - (i) is an approval holder for the action; or
  - (ii) is carrying out an environmental audit of the site at which the incident is occurring or has occurred; or
  - (iii) is an owner or occupier of the land on or in relation to which the incident occurred; and
- (d) the person fails to notify the CEO of the incident; and
- (e) the failure to notify the CEO of the incident results in a contravention of section 225.

Penalty: environmental offence level 3.

- (4) A person commits an offence if:
- (a) an incident occurs in the course of carrying out an action; and
  - (b) the incident results in material environmental harm; and
  - (c) the person:
    - (i) is an approval holder for the action; or
    - (ii) is carrying out an environmental audit of a site at which the incident is occurring or has occurred; or
    - (iii) is an owner or occupier of the site at which the incident occurred; and
  - (d) the person fails to notify the CEO of the incident; and
  - (e) the failure to notify the CEO of the incident results in a contravention of section 225.

Penalty:                            environmental offence level 4.

- (5) Strict liability applies to subsections (1)(a), (b) and (c) and (2)(a), (b) and (c).
- (6) An offence against subsection (3) or (4) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (7).

## **229        Incriminating information**

- (1) A person is required to notify an incident under this Division even if to do so might incriminate the person or make the person liable to a penalty.
- (2) Any information that is given by a person in a notice under this Division is not admissible in evidence against the person for an offence or for the imposition of a penalty.
- (3) Subsection (2) does not prevent the use of information given by a person in a notice under this Division to locate or identify further evidence that may be used in evidence against the person in a proceeding for an offence or the imposition of a penalty.

- (4) Subsection (2) does not apply in relation to:
- (a) an offence relating to the provision of false or misleading information; or
  - (b) an offence against section 228.

## **Part 10 Civil proceedings**

### **Division 1 Injunctions and other orders**

#### **230 Who may bring proceeding**

A person who is affected by an alleged act or omission that contravenes or may contravene this Act may apply to the court for an injunction or another order under this Division.

#### **231 Prohibitory injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage in conduct constituting a contravention of this Act, the court may grant an injunction restraining the person from engaging in the conduct.
- (2) If the court grants an injunction restraining a person from engaging in conduct and in the opinion of the court it is desirable to do so, the court may make an order requiring the person to do a specified act or thing.

#### **232 Mandatory injunctions**

If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act or thing, and the refusal or failure did, does or would constitute a contravention of this Act, the court may grant an injunction requiring the person to do the act or thing.

#### **233 Interim injunctions**

- (1) Before deciding an application for an injunction under this Division, the court may grant an interim injunction:
  - (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do an act or thing.
- (2) The court must not require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

### **234 Certain considerations for granting injunctions not relevant**

- (1) The court may grant an injunction restraining a person from engaging in conduct:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is imminent danger of environmental harm if the person engages, or continues to engage, in conduct of that kind.
- (2) The court may grant an injunction requiring a person to do a particular act or thing:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of environmental harm if the person refuses or fails to do that act or thing.

### **235 Discharge of injunctions**

On application, the court may discharge or vary an injunction.

### **236 Other orders**

On an application by the Minister, the CEO or a person mentioned in section 230, the court may make the following orders in relation to a contravention of this Act:

- (a) if the contravention of this Act has resulted in environmental harm – an order requiring the person who committed the contravention to:
  - (i) do a specified act or thing to remediate or rehabilitate any specified environmental harm; and
  - (ii) if appropriate, do a specified act or thing to prevent or mitigate further environmental harm;

- (b) if the Minister or the CEO has incurred costs or expenses in doing an act or thing to prevent or mitigate environmental harm resulting from the contravention of this Act or to remediate or rehabilitate the environment as a result of environmental harm – an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in doing the act or thing;
- (c) if a person has suffered injury or loss or damage to property as a result of the contravention of this Act, or incurred costs and expenses in doing an act or thing to prevent or mitigate that injury, loss or damage – an order against the person who committed the contravention:
  - (i) for payment of compensation for the injury, loss or damage; or
  - (ii) for the payment of the reasonable costs and expenses incurred in doing the act or thing.

**237 Court may vary or revoke order**

The court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order made under section 236.

**238 Security and undertakings**

- (1) Subject to section 239(2), the court may order an applicant in a proceeding under this Division:
  - (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; and
  - (b) to give an undertaking as to the payment of any amount of damages that may be awarded under section 240.
- (2) Without limiting its discretion under subsection (1), the court may determine not to require a security or undertaking if the court considers that the proceeding is in the public interest.

**239 Orders as to costs**

- (1) In any proceeding under this Division, the court may make any order as to costs that it considers just and reasonable.
- (2) Without limiting its discretion under subsection (1), the court may determine not to require an applicant to pay costs if the court considers that the proceeding is in the public interest.

**240 Orders as to damages on application of respondent**

- (1) The court may make an order under this section if, in a proceeding under this Division in relation to an alleged contravention of this Act, the court determines:
  - (a) that the respondent has not contravened this Act; and
  - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
  - (c) that in the circumstances it is appropriate to make an order under this section.
- (2) The court may, on the application of the respondent, and in addition to any order as to costs, require the applicant to pay to the respondent the amount determined by the court to compensate the respondent for the loss or damage suffered by the respondent.

**241 Time for commencing proceedings under this Division**

- (1) A proceeding under this Division may be commenced at any time within 90 business days after the date of the alleged act or omission that contravenes or may contravene this Act.
- (2) The court may, on application, extend the time specified in subsection (1).
- (3) An application under subsection (2) may be commenced before or after the end of the time specified in subsection (1).
- (4) In considering an application under subsection (2), the court must consider the following if the information is available:
  - (a) when the alleged contravention occurred;
  - (b) whether the impact of the alleged contravention ought to have been discovered by the applicant if the applicant had exercised due diligence in finding the impact and whether the applicant exercised that due diligence;
  - (c) whether extending the time would prejudice the proposed respondent's ability to maintain a defence to the proceeding on the merits;
  - (d) any other criteria the court considers relevant.



**242 Powers conferred are in addition to other powers of court**

The powers conferred on the court under this Division are in addition to any other powers of the court.

**Division 2 Civil penalty orders, other civil orders and directions**

**243 Purpose of Division**

The purpose of this Division is to enable the CEO to:

- (a) give directions to remediate environmental harm or rehabilitate the environment; and
- (b) to bring a proceeding for:
  - (i) a civil penalty order; or
  - (ii) another civil order.

**244 CEO may give certain directions**

- (1) The CEO may give a direction under this section to a person if the CEO is satisfied that the person has contravened a provision of this Act that is an offence of strict liability.
- (2) The CEO may direct the person to take specified steps to remediate environmental harm or to rehabilitate the environment.
- (3) The CEO may direct a person to publicise in a specified manner the contravention and the environmental impact resulting from the contravention.
- (4) The direction may be given as an alternative to a criminal proceeding.

**245 Application for civil orders**

The CEO may apply to a court of competent jurisdiction for a civil order if the CEO is satisfied that a person has contravened a provision of this Act that is an offence of strict liability.

**246 CEO to have regard to certain matters**

In determining whether to commence a proceeding or to give a direction under this Division in relation to a contravention of a provision of this Act that is an offence of strict liability, the CEO must have regard to:

- (a) the seriousness of the contravention; and
- (b) the previous record of the offender in complying with this Act; and
- (c) any other relevant matters.

**247 Notice of proposed application to court**

- (1) The CEO must not apply to a court for a civil order under this Division against a person in relation to a contravention of a provision of this Act that is an offence of strict liability unless the CEO has served on the person a notice of the CEO's intention to make that application.
- (2) The notice must:
  - (a) be in the approved form; and
  - (b) for an application for a civil penalty order – specify the maximum amount that the person may be ordered to pay as a civil penalty; and
  - (c) include a statement advising the person that the person may elect to be prosecuted for the contravention by written notice given to the CEO within the time specified in the notice.
- (3) The time specified in the notice must not be less than 21 business days.
- (4) The CEO must not apply to a court for a civil order in relation to a contravention if the person serves a written notice within the specified time on the CEO electing to be prosecuted for the contravention.

## **248 Civil orders**

- (1) On the application of the CEO, the court may make the following orders against a person if the court is satisfied on the balance of probabilities that the person has contravened a provision of this Act that is an offence of strict liability:
  - (a) an order that the person pay to the Territory a pecuniary amount as a civil penalty (a ***civil penalty order***);
  - (b) an order mentioned in section 250;
  - (c) any other order that the court considers appropriate.
- (2) The amount of a civil penalty ordered under this section to be paid in relation to a contravention of a provision that is an offence of strict liability must not exceed the amount specified by this Act as the maximum penalty for the offence.

## **249 Court to have regard to certain matters**

In determining the amount to be paid by a person as a civil penalty, the court must have regard to:

- (a) the nature and extent of the contravention; and
- (b) any environmental harm resulting from the contravention; and
- (c) any financial saving or benefit the person stood to gain by committing the contravention; and
- (d) whether the person has previously been found, in a proceeding under this Act, to have engaged in any similar conduct; and
- (e) any other matter the court considers relevant.

## **250 Civil orders under section 248(1)(b)**

Any of the following orders may be made against a person under section 248(1)(b):

- (a) an order that the person must take specified measures within a specified time:
  - (i) to prevent the contravention occurring again; or
  - (ii) to remediate any environmental harm resulting from the contravention; or

- (iii) to rehabilitate the environment as a result of any environmental harm resulting from the contravention; or
- (iv) to enhance the environment in an area for public benefit;
- (b) an order requiring the person to compensate the CEO for the costs of taking any remedial or preventive action that was made necessary as a result of the act or omission that constituted the contravention;
- (c) an order directing the person to pay to the CEO an amount that the court estimates will not exceed the financial, monetary or economic benefit that the person or a person associated with the person has gained or can reasonably be expected to gain as a result of the contravention;
- (d) an order directing the person to pay an amount in compensation to any person who has suffered loss or damage as a result of the contravention;
- (e) an order requiring the person to publicise the contravention and the environmental impact of the contravention in a specified manner.

#### **251 CEO may take measures if order not complied with**

- (1) If a person fails to take any measures specified by an order mentioned in section 250(a), the CEO may take those measures.
- (2) The CEO may recover the reasonable costs of taking any measures under subsection (1) from the person in a court of competent jurisdiction as a debt due to the Territory.
- (3) A debt mentioned in subsection (2) may be recorded under the *Land Title Act 2000* as a charge on any land owned by the offender.
- (4) The CEO may, in writing, authorise another person to exercise a power or perform a function under subsection (1) or (2) on the CEO's behalf.
- (5) If a person is authorised to exercise a power or perform a function under subsection (4), anything done by the person in the exercise of the power or the performance of the function has the same effect as if it had been done by the CEO.

#### **252 Jurisdiction is civil jurisdiction**

The jurisdiction conferred by this Division is part of the civil jurisdiction of the court.

**253      Contravention of 2 or more provisions**

If the conduct of a person constitutes a contravention of 2 or more provisions of this Act that are offences of strict liability, an amount of civil penalty may be ordered to be paid by the person under this Division in relation to the contravention of any one or more of the provisions but the person is not liable to pay more than one amount as a civil penalty in relation to the same conduct.

**254      Proceeding to be stayed if criminal proceedings commenced**

- (1) This section applies to a proceeding for:
  - (a) a civil order in relation to a contravention of this Act; or
  - (b) enforcement of a civil order mentioned in paragraph (a).
- (2) The proceeding is stayed if a criminal proceeding is commenced or has already commenced against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (3) The stayed proceeding may only be resumed if the criminal proceeding does not result in a formal finding of guilt being made against the person.

**255      Evidence not admissible in criminal proceedings**

- (1) Evidence of information given or evidence of the production of documents by a person is not admissible in a criminal proceeding against the person if:
  - (a) the person gave the evidence or produced the documents in the course of a proceeding under this Division for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.
- (2) Subsection (1) does not prevent the use of information given by a person to locate or identify further evidence that may be used in evidence against the person in a proceeding for an offence or the imposition of a penalty.
- (3) Subsection (1) does not apply to a criminal proceeding in relation to the provision of false or misleading information or documents.

**256 Orders as to costs**

In a proceeding under this Division, the court may make any order as to costs that it considers just and reasonable, including an order requiring the reimbursement of the costs and expenses incurred by the CEO in investigating the alleged offence.

**257 Recovery of amounts ordered to be paid to Territory**

Any amount ordered by a court under this Division to be paid to the Territory may be recovered by the Territory as a judgment debt.

**258 Time for bringing proceedings under this Division**

A proceeding for an order under this Division may be commenced at any time within 3 years after the date of the alleged contravention.

**259 Civil proceedings not to affect environment protection notices**

A proceeding for a civil order against a person does not affect any existing environment protection notice issued to the person or the issue of an environment protection notice to the person during or after the end of the proceeding.

**Part 11 Offences, penalties and criminal proceedings**

**Division 1 Offences**

**260 Offence to provide false or misleading information**

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and
  - (b) the other person is a relevant person; and
  - (c) the information is false or misleading information and the person has knowledge of that circumstance; and
  - (d) the relevant person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to another person; and
  - (b) the other person is a relevant person; and
  - (c) the document contains false or misleading information and the person has knowledge of that circumstance; and
  - (d) the relevant person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the relevant person's attention; and
  - (b) to the extent to which the person can reasonably do so – gives the relevant person the information necessary to remedy the misleading aspect of the document.
- (5) For this section a qualified person is acting in an official capacity when carrying out:
- (a) an environmental audit directed under Part 8, Division 2; or
  - (b) a requirement under section 178; or
  - (c) a function required to be carried out by a qualified person under the regulations.

- (6) In this section:

***relevant person*** means:

- (a) the Minister; or
- (b) the CEO; or
- (c) the NT EPA; or
- (d) an environmental officer; or
- (e) a qualified person.

**261 Contravention of court order under section 216 or 236 – environmental offence**

(1) A person commits an offence if:

- (a) the person is subject to an order under section 216; and
- (b) the person contravenes the order.

Penalty: environmental offence level 2.

(2) A person commits an offence if:

- (a) the person is subject to an order under section 236; and
- (b) the person contravenes the order.

Penalty: environmental offence level 2.

(3) An offence against this section is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against this section if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).

**262 Continuing offences**

(1) This section applies if a court has found a person guilty of a specified environmental offence.

(2) The court may, in addition to any penalty imposed for the offence, impose a penalty of not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the offence is charged.

(3) If the offence continues after the person is found guilty, the court may:

- (a) find the person guilty of a further offence; and
- (b) in addition to any penalty imposed for the further offence, impose a penalty of not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the person was first found guilty.



- (4) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains to be done after the end of the period for compliance with the requirement.

### **263 Liability of occupier**

- (1) An occupier of land must take reasonable steps and exercise due diligence, having regard to the nature and extent of the occupation, to prevent a specified environmental offence occurring on the land.
- (2) An occupier of land is taken to have committed a specified environmental offence if:
- (a) a person (the **offender**) commits a specified environmental offence; and
  - (b) the offence occurs wholly or partly on the land or part of the land.
- (3) It is a defence to a prosecution for an offence taken to have been committed by subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) This section does not affect the liability of the offender.
- (6) This section applies whether or not the offender is prosecuted for, or found guilty of, the specified environmental offence.

### **264 Liability of owner**

- (1) For section 263, an owner of land is taken to be an occupier of the land unless the owner proves that at the time the offence was committed:
- (a) the owner was not the occupier of the land; and
  - (b) the owner was not an associated person of the occupier.
- (2) The defendant has the legal burden of proof in relation to a matter mentioned in subsection (1).
- (3) In this section:
- associated person** means an employee, agent, licensee, contractor or subcontractor.

## **265 Criminal liability of executive officer of body corporate**

- (1) An executive officer of a body corporate commits an offence if:
- (a) the body corporate commits a relevant offence and the officer was reckless about whether the relevant offence would be committed; and
  - (b) the officer was in a position to influence the conduct of the body corporate in relation to the commission of the relevant offence; and
  - (c) the officer recklessly failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty:       The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) Strict liability applies to subsection (1)(b).
- (3) In deciding whether the executive officer took, or failed to take, reasonable steps to prevent the commission of the offence, a court must consider the following:
- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the commission of the offence):
    - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the provision to which the relevant offence relates;
    - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
    - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
  - (b) any action the officer took when the officer became aware that the relevant offence was, or could be, about to be committed.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.

- (6) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (7) Subsection (1) does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

*Note for subsection (7)*

*The defendant has an evidential burden in relation to the matters in subsection (7) (see section 43BU of the Criminal Code).*

- (8) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in the management of, the body corporate.

**relevant offence** means an offence against any of the following:

- (a) a specified environmental offence; or
- (b) a provision of the regulations prescribed by regulation.

## **266 Liability of partners and unincorporated associations**

- (1) If a partner (the **offender**) commits an offence against this Act, every other partner in the partnership is taken to have committed the same offence.
- (2) If a person (the **offender**) commits an offence against this Act while engaging in conduct on behalf of an unincorporated association, each member of the committee of management of the association is taken to have committed the same offence.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.
- (4) This section does not apply if the offender would have a defence to a prosecution for the offence.
- (5) It is a defence to a prosecution for an offence committed because of subsection (1) or (2) if:
  - (a) the act or omission that constituted the offence took place without the defendant's authority, permission or consent; or
  - (b) the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence; or

- (c) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.
- (6) The defendant has the legal burden of proof in relation to a matter mentioned in subsection (5).
- (7) Despite anything in this Act or the *Environmental Offences and Penalties Act 1996*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1) or (2).
- (8) For this section, a reference to engaging in conduct includes a reference to failing or refusing to engage in conduct.

## **267 Liability for employees and agents**

- (1) For a prosecution for an offence against this Act, conduct engaged in on behalf of a person other than a body corporate (the **employer**) by an employee or agent of the employer within the scope of the employee or agent's actual or apparent authority is taken to have been engaged in also by the employer.
- (2) This section applies whether or not the employee or agent is prosecuted for, or convicted of, the offence.
- (3) This section does not apply if the employee or agent would have a defence to a prosecution for the offence.
- (4) It is a defence to a prosecution for an offence committed because of subsection (1) if:
  - (a) the act or omission that constituted the offence took place without the defendant's authority, permission or consent; or
  - (b) the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence; or
  - (c) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.
- (5) The defendant has the legal burden of proof in relation to a matter mentioned in subsection (4).

- (6) Despite anything in this Act or the *Environmental Offences and Penalties Act 1996*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1).
- (7) For this section, a reference to engaging in conduct includes a reference to failing or refusing to engage in conduct.

**268 Court may order reimbursement of investigation costs**

- (1) This section applies if a person is found guilty of an offence against this Act.
- (2) The court may, in addition to any other order it may make under this Act or the *Sentencing Act 1995*, make an order requiring the offender to reimburse the costs and expenses incurred by the CEO in investigating the offence.

**269 Alternative verdicts**

- (1) This section applies if, in a proceeding against a person charged with an offence against a provision mentioned in the following Table (the **prosecuted offence**), the trier of fact:
- (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but
- (b) is satisfied beyond reasonable doubt that the person committed an offence against a provision specified in the Table as the alternative offence for the prosecuted offence.
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

**Table Alternative offences**

| <b>Prosecuted offence</b> | <b>Alternative offence</b>     |
|---------------------------|--------------------------------|
| section 34(1)             | section 34(2), (3), (4) or (5) |
| section 34(2)             | section 34(4) or (5)           |
| section 34(3)             | section 34(4) or (5)           |
| section 34(4)             | section 34(5)                  |
| section 40(1)             | section 40(2), (3) or (4)      |
| section 40(2)             | section 40(4)                  |
| section 40(3)             | section 40(4)                  |
| section 41(1)             | section 41(2), (3) or (4)      |

| <b>Prosecuted offence</b> | <b>Alternative offence</b> |
|---------------------------|----------------------------|
| section 41(2)             | section 41(4)              |
| section 41(3)             | section 41(4)              |
| section 89(1)             | section 89(2), (3) or (4)  |
| section 89(2)             | section 89(4)              |
| section 89(3)             | section 89(4)              |
| section 117(1)            | section 117(2), (3) or (4) |
| section 117(2)            | section 117(4)             |
| section 117(3)            | section 117(4)             |
| section 151(1)            | section 151(2)             |
| section 154(1)            | section 154(2)             |
| section 191(1)            | section 191(2), (3) or (4) |
| section 191(2)            | section 191(4)             |
| section 191(3)            | section 191(4)             |
| section 198(1)            | section 198(2), (3) or (4) |
| section 198(2)            | section 198(4)             |
| section 198(3)            | section 198(4)             |
| section 228(1)            | section 228(2), (3) or (4) |
| section 228(2)            | section 228(4)             |
| section 228(3)            | section 228(4)             |

## **Division 2 Specified environmental offences**

### **270 Principles to be applied in imposing a penalty for specified environmental offences**

When imposing a penalty on a person (the **offender**) for a specified environmental offence, the court must have regard to the following to the extent that they are relevant:

- (a) any benefit or likely benefit obtained by the offender in committing the offence and the desirability of fixing a penalty that outweighs the benefit or potential benefit of the conduct;
- (b) the extent of the environmental harm caused, including whether the harm is long-term or irreversible;
- (c) whether there is a need to deter cumulative impacts of conduct of this kind by the offender and others;

- (d) the extent of any efforts by the offender to minimise or remediate the environmental harm;
- (e) the extent to which the offender made efforts to comply with the environmental approval;
- (f) any history of non-compliance by the offender with this Act;
- (g) whether there was deliberate concealment of the conduct or of the illegal nature of the conduct;
- (h) any other matters the court considers relevant.

**271 Additional court orders where specified environmental offence proved**

- (1) If a person (the **offender**) is found guilty of a specified environmental offence, the court may, having regard to the nature of the offence and the circumstances of the offence, make any orders it considers appropriate including the following:
  - (a) an order that the offender must take specified measures within a specified time:
    - (i) to prevent the offence occurring again; or
    - (ii) to remediate any environmental harm resulting from the offence; or
    - (iii) to rehabilitate the environment as a result of any environmental harm resulting from the offence; or
    - (iv) to enhance the environment in an area for public benefit;
  - (b) an order requiring the offender to compensate the CEO for the costs of taking any remedial or preventive action that was made necessary as a result of the act or omission that constituted the offence;
  - (c) an order directing the offender to pay to the CEO an amount that the court estimates will not exceed the financial, monetary or economic benefit that the offender or a person associated with the offender has gained or can reasonably be expected to gain as a result of the commission of the offence;
  - (d) an order directing the offender to pay an amount in compensation to any person who has suffered loss or damage as a result of the commission of the offence;

- (e) an order requiring the offender to publicise the offence and the environmental consequences in a specified manner.
- (2) An order under this section is in addition to any other order that the court may make under this Act or the *Sentencing Act 1995*.

## **272 CEO may take measures if order not complied with**

- (1) If the offender fails to take any measures specified by an order under section 271(1)(a), the CEO may take those measures.
- (2) The CEO may recover the reasonable costs of taking any measures under subsection (1) in a court of competent jurisdiction as a debt due to the Territory.
- (3) A debt mentioned in subsection (2) may be recorded under the *Land Title Act 2000* as a charge on any land owned by the offender.
- (4) The CEO may, in writing, authorise another person to exercise a power or perform a function under subsection (1) or (2) on the CEO's behalf.
- (5) If a person is authorised to exercise a power or perform a function under subsection (4), anything done by the person in the exercise of the power or the performance of the function has the same effect as if it had been done by the CEO.

## **Division 3 Criminal proceedings**

### **273 Who can commence proceedings**

- (1) A proceeding for an offence against this Act may be brought by:
  - (a) the CEO or a person authorised by the CEO; or
  - (b) an environmental officer.
- (2) An environmental officer other than a police officer must obtain the consent of the following before commencing the proceeding:
  - (a) the NT EPA in relation to an offence against any of the following provisions:
    - (i) section 34;
    - (ii) section 54;
    - (iii) if the request was made by the NT EPA – section 151;
    - (iv) section 198;



- (v) if the relevant person is the NT EPA – section 260;
  - (vi) if the relevant offence is an offence mentioned in subparagraphs (i) to (v) – section 265;
- (b) otherwise – the CEO.

#### **274 Time for commencing prosecution**

A prosecution for an offence against this Act must be commenced not more than 3 years after the later of:

- (a) the date on which the offence was committed; or
- (b) the date on which evidence of the offence first came to the attention of the CEO or the NT EPA, as the case requires.

#### **275 Enforcement agency for *Fines and Penalties (Recovery) Act 2001***

- (1) The CEO is an enforcement agency for the *Fines and Penalties (Recovery) Act 2001*.
- (2) The NT EPA is an enforcement agency for the *Fines and Penalties (Recovery) Act 2001*.

## **Part 12 Review of decisions**

### **276 Standing for judicial review**

- (1) A person may seek judicial review of a decision of the Minister, the CEO, the NT EPA or an environmental officer under this Act if the person is:
  - (a) a proponent of an action to which the decision relates; or
  - (b) an applicant for the decision; or
  - (c) a person directly affected by the decision; or
  - (d) a person who has made a genuine and valid submission during an environmental impact assessment and environmental approval process under this Act to which the decision relates.
- (2) For subsection (1)(d), a genuine and valid submission by a person does not include:
  - (a) a submission by the person in the form of a form letter or petition prepared by another body or organisation; or

- (b) a submission made after the end of the submission period, unless the court considers that in the circumstances it should be considered a genuine and valid submission.

### **277      Review by NTCAT**

- (1) NTCAT has jurisdiction to review a decision (a **reviewable decision**) specified in the Schedule.
- (2) An **affected person**, for a reviewable decision, is a person specified in the Schedule for that decision.
- (3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.

*Note for section 277*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.*

## **Part 13      General matters**

### **Division 1      Delegation**

#### **278      Delegation by Minister**

- (1) The Minister may delegate any of the Minister's powers and functions under this Act to the CEO or a person other than the NT EPA or a member of the NT EPA.
- (2) The Minister may delegate to the NT EPA or a member of the NT EPA any power of the Minister relating to the amendment of an environmental approval.

#### **279      Delegation by CEO**

The CEO may delegate any of the CEO's powers and functions under this Act to a person.

### **Division 2      Service**

#### **280      Service**

- (1) A document required to be given to a person under this Act may be given:
- (a) by serving it on the recipient as authorised by section 25 of the *Interpretation Act 1978*; or

- (b) by sending it to the recipient's email address as an attachment to an email.
- (2) Subject to evidence to the contrary, a document sent as mentioned in subsection (1)(b) is taken to be given to the recipient when it is sent to the recipient's email address.

*Note for section 280*

*See section 25(2) to (4) of the Interpretation Act 1978 for when notices, directions or requests served as mentioned in subsection (1)(a) are taken to be served.*

## **Division 3      Confidentiality of information**

### **281      Confidential information**

- (1) This section applies if a proponent or an approval holder is required under this Act or the regulations to provide information to the Minister or the NT EPA in relation to:
  - (a) a referred action; or
  - (b) a referred strategic proposal; or
  - (c) the environmental impact assessment of an action; or
  - (d) the approval of an action; or
  - (e) a significant variation of an action; or
  - (f) the amendment of an environmental approval; or
  - (g) the suspension or revocation of an environmental approval; or
  - (h) the transfer of an environmental approval; or
  - (i) a circumstance prescribed by regulation.
- (2) At the time of providing the information, the proponent or approval holder may request that identified information provided not be made public on the basis that the information is:
  - (a) commercial-in-confidence, which may include:
    - (i) commercial contractual information; or
    - (ii) confidential agreements with third parties if these are required not to be disclosed; or
  - (b) cultural-in-confidence; or
  - (c) subject to legal professional privilege; or

- (d) otherwise required by law to be withheld from publication ; or
  - (e) information that is in the public interest to withhold.
- (3) An application must be made in accordance with the regulations.

## **282      Decision of Minister or NT EPA**

- (1) After considering a request under section 281, the Minister or the NT EPA may decide that specified information provided to the Minister or the NT EPA (as the case requires) is not required to be published under this Act if satisfied that:
- (a) the information is of a kind mentioned in section 281(2); and
  - (b) it is appropriate to withhold it from publication.
- (2) The Minister or NT EPA must not decide that information is commercial-in-confidence unless satisfied that:
- (a) release of the information would cause competitive detriment to the applicant; and
  - (b) the information is not in the public domain; and
  - (c) the information is not readily discoverable.

## **283      Effect of decision**

- (1) This section applies if the Minister or the NT EPA decides under section 282 that information may be withheld from publication.
- (2) The proponent or approval holder is not required to publish the information under this Act.
- (3) The proponent or approval holder is still required to provide the information to the Minister or the NT EPA under this Act.
- (4) The Minister or the NT EPA must not publish information that it has decided may be withheld from publication under this Act unless required to do so by another Act or law.

## **Division 4      Public register**

### **284      Public register**

- (1) The CEO must keep a public register to provide a public record of prescribed activities, obligations, decisions and enforcement actions under this Act.

- (2) The public register must be kept in a form determined by the CEO.
- (3) The CEO must include in the public register the information required by regulation.

## **Division 5      Directions to provide information**

### **285      Direction notice**

- (1) The Minister may, by *Gazette* notice, direct proponents or approval holders to provide information for the following purposes:
  - (a) to assist the environmental impact assessment process;
  - (b) to assist the environmental approval process;
  - (c) to assist the monitoring of actions;
  - (d) to assist in identifying and understanding the current quality of the environment;
  - (e) to assist in identifying changes to the quality of the environment over time;
  - (f) to assist in identifying and monitoring impacts on the environment.
- (2) The notice must specify:
  - (a) the time or times for providing the information; and
  - (b) the periods to which the information must relate; and
  - (c) the required methodology for collecting the information; and
  - (d) the required methods for reporting the information and the methodology used; and
  - (e) the person to whom the information must be provided; and
  - (f) the prescribed matters.
- (3) The notice may make different directions for:
  - (a) different classes of proponents or approval holders; or
  - (b) different classes of actions; or
  - (c) different parts of the Territory.

## **286 Methodologies**

- (1) The CEO or the NT EPA may specify methodologies to be used for section 285.
- (2) A methodology may refer to a published standard.
- (3) The CEO or NT EPA must publish a methodology specified under this section.

## **287 Proponent or approval holder to provide information**

- (1) A proponent or an approval holder commits an offence if the proponent or the approval holder contravenes a notice under section 285.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) Subsection (1) does not apply to a proponent or an approval holder in relation to information if an exemption is granted under section 288 in relation to that information.

## **288 Proponent or approval holder may seek exemption**

- (1) A proponent or an approval holder may, in writing, apply to the Minister for an exemption from compliance with a notice under section 285 on the ground that it would be unreasonable for the proponent or approval holder to provide the required information.
- (2) The Minister may grant or refuse an application under subsection (1).
- (3) The Minister must refuse an application under subsection (1) unless the Minister is satisfied that granting the exemption will not undermine the objects of this Act.
- (4) The Minister must publish a decision under subsection (2) and the reasons for the decision as soon as practicable after the decision is made.

**289      Publication of information**

The Minister or the CEO may publish any information provided by a proponent or an approval holder under this Division.

**Division 6      Report by CEO**

**290      CEO to report on enforcement and compliance**

- (1) The CEO must publish a report on all enforcement measures and compliance measures taken under this Act at least once in each year.
- (2) The CEO may determine the form of the report which may include:
  - (a) a separate published report; or
  - (b) a report recorded on the public register; or
  - (c) a report included in the annual report of the Agency.

**Division 7      Guidance and procedural documents**

**291      Guidance documents**

- (1) The Minister, the CEO and the NT EPA may publish guidance documents in relation to any requirements or processes under this Act.
- (2) The purpose of a guidance document is to provide advice on the operation of this Act.
- (3) A guidance document must not be inconsistent with this Act.
- (4) A guidance document may refer to or adopt a published standard as in force from time to time.

**292      Approved forms**

The CEO may approve forms for this Act.

**Division 8      Regulations**

**293      Regulations**

- (1) The Administrator may make regulations under this Act.

*Note for subsection (1)*

*See section 65 of the Interpretation Act 1978.*

- (2) The regulations may deal with the following:
- (a) prescribe fees payable under this Act;
  - (b) provide for the recovery of costs incurred by the Minister, the CEO or the NT EPA under or for this Act;
  - (c) provide for an offence against a regulation to be an offence of strict or absolute liability;
  - (d) for an offence against a regulation other than an offence of strict liability or absolute liability – prescribe:
    - (i) a fine not exceeding 200 penalty units; or
    - (ii) an environmental penalty not exceeding environmental penalty level 3;
  - (e) for an offence against a regulation that is an offence of strict liability or absolute liability – prescribe:
    - (i) a fine not exceeding 100 penalty units; or
    - (ii) an environmental penalty not exceeding environmental penalty level 3;
  - (f) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (g) make different provision for different cases or class of case.

## **Part 14            Repeals and transitional matters**

### **Division 1            Acts repealed**

#### **294            Acts repealed**

The following Acts are repealed:

- (a) *Environmental Assessment Act 1982* (Act No. 65 of 1982);
- (b) *Environmental Assessment Amendment Act 1994* (Act No. 73 of 1994).



## **Division 2      Transitional matters**

### **295      Definitions**

In this Division:

**commencement** means the commencement of section 294.

**former Act** means the *Environmental Assessment Act 1982*.

**former procedures** means the *Environmental Assessment Administrative Procedures 1984*.

**prescribed Act** means:

- (a) *Mining Management Act 2001*; or
- (b) *Petroleum Act 1984*; or
- (c) *Planning Act 1999*; or
- (d) *Waste Management and Pollution Control Act 1998*.

### **296      Saving of existing assessments commenced but not completed**

- (1) Subject to this Division, if an assessment of a proposed action commenced under the former Act but an assessment report was not completed before the commencement, the former Act continues to apply to that assessment as if section 294 had not commenced.
- (2) For subsection (1), the former procedures continue to apply to the proposal as if:
  - (a) section 294 had not commenced; and
  - (b) any reference in the former procedures to "days" were a reference to "business days"; and
  - (c) after clause 10A(1) there were inserted:
    - "(1A) Clauses 9 and 10 apply (with any necessary changes) in relation to a supplement prepared under subclause (2) as if:
      - (a) the supplement were a report; and
      - (b) any reference in clause 9(2)(b) to 28 days were a reference to 15 business days"; and

(d) after clause 11(1) there were inserted:

"(1A) If a supplement is prepared after the commencement of section 294 of the *Environment Protection Act 2019*, the reference in subclause (1) to the period specified in the notice mentioned in clause 9(2)(b)(i) is a reference to that period as specified in relation to the supplement."; and

(e) in clause 11(3)(a) after "clause 9" there were inserted "(including any comments relating to a supplement)".

## **297 Termination of assessment under former Act**

(1) This section applies if:

- (a) an assessment process commenced in relation to a proposed action under the former Act before the commencement; and
- (b) the proponent had taken no steps or only limited steps in the assessment process before the commencement.

(2) The NT EPA may terminate the assessment process under the former Act if the NT EPA considers that continuing the assessment process is no longer appropriate because of the passage of time since the assessment process commenced.

(3) Before making a decision under subsection (2), the NT EPA must give the proponent:

- (a) written notice of the proposed termination; and
- (b) an opportunity to make a submission in relation to the proposed termination.

(4) If an assessment process is terminated under this section, this Act applies to the environmental impact assessment of the proposed action.

(5) The NT EPA must give written notice to the Minister and to the responsible Minister, as defined in section 3 of the former Act. of the termination of an assessment process under this section.

## **298 Environmental audit**

Part 8, Divisions 1 and 2 and Part 9, Divisions 1 and 3 apply (with any necessary changes) in relation to:

- (a) an action assessed under the former Act before the commencement as if it were an action referred under this Act; and

- (b) a proposed action that continues to be assessed under the former Act after the commencement as if it were a proposed action referred under this Act.

**299 Assessment report**

An assessment report prepared under the former Act before or after the commencement is taken to be an assessment report for this Act.

**300 Assessment report completed under former Act before commencement**

- (1) This section applies if:
  - (a) an assessment report for a proposed action was completed under the former Act before the commencement; and
  - (b) the proposed action had not commenced before the commencement.
- (2) An environmental approval is not required for the proposed action if a statutory authorisation is required under a prescribed Act to permit the action.
- (3) An environmental approval is required for the proposed action if no statutory authorisation under a prescribed Act is required to permit the action.
- (4) Sections 8A and 8B of the former Act continue to apply in relation to an assessment report completed before the commencement for a proposed action for which a statutory authorisation is required under a prescribed Act.

**301 Assessment report completed under former Act after commencement**

- (1) This section applies if an assessment report for a proposed action is completed under the former Act after the commencement.
- (2) An environmental approval is required under this Act for the proposed action.

**302 Process for environmental approval**

- (1) For sections 300(3) and 301(2), the NT EPA must:
  - (a) provide the assessment report to the Minister; and

- (b) prepare a draft environmental approval for the proposed action in accordance with the regulations; and
  - (c) provide the draft environmental approval to the Minister together with the assessment report in accordance with Part 5.
- (2) Subsection (1)(b) does not apply if the NT EPA:
- (a) prepares a statement of unacceptable impact in accordance with the regulations; and
  - (b) provides that statement to the Minister together with the assessment report in accordance with Part 5.

### **303 Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
- (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of the former Act to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a government authority) by:
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, are repealed 1 year after the commencement.

## **Part 15 Consequential amendments**

### **Division 1 Geothermal Energy Act 2009**

#### **304 Act amended**

This Division amends the *Geothermal Energy Act 2009*.

**305 Section 68 amended (Approval of geothermal operations plan)**

- (1) Section 68(2)(a)  
*omit*
- (2) After section 68(3)  
*insert*
- (3A) If a geothermal activity is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the Minister must not approve a geothermal operations plan covering that activity unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that activity; or
  - (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the activity; or
  - (c) the *Environment Protection Act 2019* otherwise permits the granting of the approval of the geothermal operations plan.

**Division 2 Meat Industries Act 1996**

**306 Act amended**

This Division amends the *Meat Industries Act 1996*.

**307 Section 15 amended (Applications relating to establishment in area not subject to development provisions or interim development control order)**

Section 15(2)(a)

*omit*

*Environmental Assessment Act 1982*

*insert*

*Environment Protection Act 2019*

**Division 3 Mining Management Act 2001**

**308 Act amended**

This Division amends the *Mining Management Act 2001*.

**309 Section 36 amended (Approval of mining management plan and grant of Authorisation)**

After section 36(5)

*insert*

- (5A) If a mining activity is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the Minister must not approve a mining management plan covering that activity or grant an Authorisation for that activity unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that activity; or
  - (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the activity; or
  - (c) the *Environment Protection Act 2019* otherwise permits the granting of the approval of the mining management plan and the granting of that Authorisation.

**310 Section 37 amended (Duration and conditions of Authorisation)**

- (1) Section 37(3)(b)

*omit*

- (2) Section 37(4)

*omit, insert*

- (4) For subsection (3)(e), an ***environmental mining report*** is a report about an operator's environmental performance in carrying out activities for mining minerals.

**311 Section 82 amended (Protection of environment)**

Section 82(c)

*omit, insert*

- (c) any environmental approval for the activities granted under the *Environment Protection Act 2019*.

**312 Part 13 inserted**

After section 103

*insert*

**Part 13 Transitional matters for Environment Protection Act 2019**

**104 Definition**

In this Part:

***commencement*** means the commencement of section 294 of the *Environment Protection Act 2019*.

**105 Environmental assessment completed before commencement**

(1) This section applies if:

- (a) an application for an Authorisation under Part 4, Division 2 or the approval of a mining management plan for a mining activity was made before the commencement or within 3 years after the commencement; and
- (b) an environmental assessment of the mining activity was completed under the *Environmental Assessment Act 1982* before the commencement; and
- (c) the Authorisation was not granted or the approval was not given before the commencement.

(2) This Act as in force immediately before the commencement continues to apply to the determination of the application for the Authorisation or approval.

**Division 4 Northern Territory Environment Protection Authority Act 2012**

**313 Act amended**

This Division amends the *Northern Territory Environment Protection Authority Act 2012*.

**314 Section 3 amended (Definitions)**

Section 3

*insert*

***principles of ecologically sustainable development*** has the same meaning as in the *Environment Protection Act 2019*.

**315 Section 25AA amended (Regard to principles of ecologically sustainable development)**

(1) Section 25AA(1)

*omit*

(1)

(2) Section 25AA(2)

*omit*

**Division 5 Petroleum Act 1984**

**316 Act amended**

This Division amends the *Petroleum Act 1984*.

**317 Section 15A amended (Appropriate person to hold permit or licence)**

Section 15A(6), definition ***prescribed environmental legislation***, paragraph (a)

*omit, insert*

(a) the *Environment Protection Act 2019*;

**Division 6 Planning Act 1999**

**318 Act amended**

This Division amends the *Planning Act 1999*.



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**319 Section 30C amended (Making concurrent application)**

Section 30C(4)(b)

*omit, insert*

- (b) a statement specifying:
- (i) whether the proposal is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*; and
  - (ii) whether the proposal has been referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*;

**320 Section 30P amended (Preliminary decision about development proposal)**

(1) Section 30P(2)(h)

*omit*

(2) After section 30P(2)

*insert*

- (2A) If a development proposal is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the consent authority must not make a preliminary decision under this section in relation to the development proposal unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or
  - (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or
  - (c) the *Environment Protection Act 2019* otherwise permits the making of the preliminary decision.

**321 Section 30S amended (Matters to be taken into account for amendment decision)**

(1) Section 30S, before "In"

*insert*

(1)

- (2) Section 30S(g)  
*omit*
- (3) Section 30S, at the end  
*insert*
- (2) If an amendment proposal is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the Minister must not make an amendment decision under section 30R in relation to the amendment proposal unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or
  - (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval is granted under that Act for the proposal and the decision is consistent with that approval; or
  - (c) the *Environment Protection Act 2019* otherwise permits the making of the decision.

**322 Section 42 amended (Matters to be taken into account when making decision)**

- (1) Section 42, before "In"  
*insert*
- (1)
- (2) Section 42  
*omit*
- (g),
- (3) Section 42, at the end  
*insert*
- (2) If a proposal relating to the development or use of land is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the Minister must not make a decision under section 40 in relation to the proposal unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or

- (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or
- (c) the *Environment Protection Act 2019* otherwise permits the making of the decision.

**323 Section 46 amended (Development applications)**

Section 46(3)(c)

*omit, insert*

- (c) a statement specifying:
  - (i) whether the proposed development is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*; and
  - (ii) whether the proposed development has been referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*;

**324 Section 51 amended (Matters to be taken into account)**

- (1) Section 51, before "A consent"

*insert*

(1)

- (2) Section 51(g)

*omit*

- (3) Section 51, at the end

*insert*

- (2) If a development proposal is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the consent authority must not make a decision under this Division in relation to a development application for the proposal unless:
  - (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or

- (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or
- (c) the *Environment Protection Act 2019* otherwise permits the making of the decision.

**325 Section 112 amended (Review if consent authority does not determine application)**

- (1) Section 112(1)(ba)(iii)

*omit*

application; or

*insert*

application.

- (2) Section 112(1)(c)

*omit*

- (3) After section 112(1)

*insert*

- (1A) The period of 12 weeks mentioned in subsection (1)(a) ceases to run during any period that the consent authority is not able to make a decision on the application because of the effect of section 51(2).

**326 Part 12, Division 6 inserted**

After section 208

*insert*

**Division 6 Environment Protection Act 2019**

**209 Definition**

In this Division:

***commencement*** means the commencement of section 294 of the *Environment Protection Act 2019*.

## **210 Environmental assessment completed before commencement**

- (1) This section applies if:
- (a) an application for a development permit or an exceptional development permit or a consent under Part 2A, Division 5 for a development proposal was made before the commencement or within 2 years after the commencement; and
  - (b) an environmental assessment of the development proposal was completed under the *Environmental Assessment Act 1982* before the commencement; and
  - (c) the permit or consent was not granted or given before the commencement.
- (2) This Act as in force immediately before the commencement continues to apply to the determination of the application for the permit or consent.

## **Division 7 Waste Management and Pollution Control Act 1998**

### **327 Act amended**

This Division amends the *Waste Management and Pollution Control Act 1998*.

### **328 Section 32 amended (Matters to be considered in granting approvals and licences)**

- (1) Section 32(1)(f)  
*omit*
- (2) After section 32(1)  
*insert*
- (1A) If an activity or a proposed activity is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the NT EPA must not grant an environment protection approval or an environment protection licence or a best practice licence in relation to that activity or proposed activity unless:
- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that activity; or

- (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for that activity; or
- (c) the *Environment Protection Act 2019* otherwise permits the granting of the environment protection approval or environment protection licence or best practice licence.

**329 Part 16 inserted**

After section 124

*insert*

**Part 16 Transitional matters for *Environment Protection Act 2019***

**125 Definition**

In this Part:

**commencement** means the commencement of section 294 of the *Environment Protection Act 2019*.

**126 Environmental assessment completed before commencement**

- (1) This section applies if:
  - (a) an application for an environment protection approval, environment protection licence or best practice licence for a development proposal was made before the commencement or within 2 years after the commencement; and
  - (b) an environmental assessment of the development proposal was completed under the *Environmental Assessment Act 1982* before the commencement; and
  - (c) the approval or licence was not granted or given before the commencement.
- (2) This Act as in force immediately before the commencement continues to apply to the determination of the application for the approval or licence.

## **Division 8 Environmental Offences and Penalties Regulations 2011**

### **330 Regulations amended**

This Division amends the *Environmental Offences and Penalties Regulations 2011*.

### **331 Schedule amended (Prescribed Acts)**

Schedule

*insert*

*Environment Protection Act 2019*

## **Division 9 Fines and Penalties (Recovery) Regulations 2001**

### **332 Regulations amended**

This Division amends the *Fines and Penalties (Recovery) Regulations 2001*.

### **333 Schedule 1 amended**

Schedule 1

*insert*

*Environment Protection Act 2019*

## **Division 10 Northern Territory Aboriginal Sacred Sites Regulations 2004**

### **334 Regulations amended**

This Division amends the *Northern Territory Aboriginal Sacred Sites Regulations 2004*.

### **335 Schedule 1 amended (Guidelines for classifying applications)**

Schedule 1, clause 2(2.2)(a)

*omit, insert*

(a) requires an environmental impact assessment under the *Environment Protection Act 2019*; or

## Division 11 Petroleum (Environment) Regulations 2016

### 336 Regulations amended

This Division amends the *Petroleum (Environment) Regulations 2016*.

### 337 Regulation 3 amended (Definitions)

Regulation 3, definitions ***assessment report*** and ***environmental assessment recommendation***

*omit*

### 338 Regulation 9 amended (Approval criteria for plan)

Regulation 9(2) and (3)

*omit, insert*

- (2) The Minister must take into account the principles of ecologically sustainable development when considering whether an environment management plan meets the approval criteria mentioned in subregulation (1)(c).
- (3) If an activity is required to be referred to the NT EPA under Part 4, Division 3 of the *Environment Protection Act 2019*, the Minister must not make a decision to approve an environment management plan for the activity under regulation 11 unless:
  - (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that activity; or
  - (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval is granted under that Act for the activity and the decision is consistent with that approval; or
  - (c) the *Environment Protection Act 2019* otherwise permits the making of the decision.



**339 Regulation 12 amended (Approval notice and statement of reasons)**

Regulation 12(3)

*omit, insert*

- (3) An approval notice for a plan must be accompanied by a statement of reasons for the approval that includes information about:
- (a) how the plan meets the approval criteria; and
  - (b) the manner in which the Minister has taken into account the principles of ecologically sustainable development when considering whether or not the plan meets the approval criteria.

**340 Regulation 13 amended (Refusal notice and statement of reasons)**

- (1) Regulation 13(2)(b)

*omit*

criteria;

*insert*

criteria.

- (2) Regulation 13(2)(c)

*omit*

**341 Part 6 inserted**

After regulation 46

*insert*

**Part 6 Transitional matters for Environment Protection Act 2019**

**47 Definition**

In this Part:

***commencement*** means the commencement of section 294 of the *Environment Protection Act 2019*.

**48 Environmental assessment completed before commencement**

- (1) This regulation applies if:
- (a) an application for approval of an environment management plan for an activity was made before the commencement; and
  - (b) an environmental assessment of the activity was completed under the *Environmental Assessment Act 1982* before the commencement; and
  - (c) the environment management plan was not approved before the commencement.
- (2) These regulations as in force immediately before the commencement continue to apply to the determination of the application for the approval of the environment management plan.

**Division 12 Repeal of Part**

**342 Repeal of Part**

This Part is repealed on the day after it commences.

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**Schedule Reviewable decisions and affected persons**

section 277

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| <b>Reviewable decision</b>  | <b>Affected person</b>   |
|---|--|
| A decision of the CEO to give a direction to carry out an environmental audit under section 142   | A person to whom the direction is given                                    |
| A decision of the CEO to issue an environment protection notice under section 176 or an emergency environment protection notice under section 182 | The person to whom the notice is issued                                    |
| A decision of an environmental officer to issue an emergency environment protection notice under section 183                                      | The person to whom the notice is issued                                    |
| A decision to lodge a copy of an environment protection notice with the Registrar-General under section 185                                       | An owner or occupier of the land   |
| A decision to lodge a copy of a closure notice with the Registrar-General under section 202   | An owner or occupier of the land   |
| A decision of the CEO to impose a condition on an emergency authorisation issued under section 223  | The person to whom the emergency authorisation is issued under section 223 |
| A decision of the CEO to refuse to issue an emergency authorisation under section 223   | The applicant for the authorisation  |
| A decision under this Act prescribed by the regulations   | A person prescribed by the regulations in relation to that decision        |

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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 Act 2019 (Act No. 31, 2019)***

|             |   |
|-------------|---|
| Assent date | 9 October 2019                                      |
| Commenced   | 28 June 2020 ( <i>Gaz G17</i> , 29 April 2020, p 2) |

***Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)***

|             |   |
|-------------|---|
| Assent date | 6 November 2019   |
| Commenced   | pts 2 and 3: 11 December 2019 ( <i>Gaz G50</i> , 11 December 2019, p 2); rem: 7 November 2019 (s 2) |

**3 LIST OF AMENDMENTS**

s 341            amd No. 33, 2019, s 50