

NORTHERN TERRITORY OF AUSTRALIA

ENVIRONMENT PROTECTION AUTHORITY AMENDMENT ACT 2010

Act No. 5 of 2010

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Schedule **Further amendments of Environment
Protection Authority Act 2007**



NORTHERN TERRITORY OF AUSTRALIA

Act No. 5 of 2010

An Act to amend the *Environment Protection Authority Act*

[Assented to 17 March 2010]
[Second reading 26 November 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Environment Protection Authority Amendment Act 2010*.

2 Commencement

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

Part 2 Amendment of Environment Protection Authority Act 2007 first commencing

3 Act amended

This Part amends the *Environment Protection Authority Act 2007*.

4 Amendment of section 3 (Definitions)

- (1) Section 3, definition **Government Business Division**
omit

(2) Section 3

insert (in alphabetical order)

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

advise includes make a recommendation.

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

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

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

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

5 **New sections 3A and 3B**

After section 3, in Part 1

insert

3A **Act binds Crown**

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

3B **Application of Criminal Code**

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

Note for section 3B

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

6 Repeal and substitution of section 5 (Functions)

Section 5

repeal, substitute

5 Function

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

5A Advice about ongoing systemic issues

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

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

recommendation includes a comment and a suggestion.

5B Other issues on which advice may be given

- (1) For achieving its function, the Authority may also, on its own initiative or at the request of the Minister or a member of the public, give advice about any of the following matters:
 - (a) achieving best practice environmental policy and management;
 - (b) setting objectives, targets and standards for the public and private sectors;
 - (c) reviewing procedures of the public and private sectors;
 - (d) legislation and its administration;
 - (e) issues affecting the Territory's capacity to achieve ecologically sustainable development;
 - (f) emerging environmental issues.
- (2) However, the Authority may give advice about the environmental aspects of a particular proposed action under subsection (1) only if the Minister is given notice of the proposed action under the Administrative Procedures after the commencement of this section.

7 Amendment of section 6 (Powers)

Section 6(2)(b) and (c)

omit, substitute

- (b) by written notice, require a person to give it relevant information within the reasonable period stated in the notice.

8 New section 7A

After section 7

insert

7A Authority and Minister may make administrative arrangement

- (1) The Authority may make an administrative arrangement with the Minister about the exercise of its powers and performance of its function.
- (2) The arrangement may, for example, deal with the following:
 - (a) informing the Minister about an inquiry it is conducting or intends to conduct;

-
- (b) the scope of the inquiry.
- (3) Subsection (2) does not limit the matters that may be dealt with in the arrangement.
- (4) However, the arrangement does not affect the Authority's independence.
- (5) The Authority must publicise the arrangement in the way it considers appropriate.

9 New Part 2A

After section 23

insert

Part 2A Offences

23A Failing to give information

- (1) This section applies to a person who is required by written notice under section 6(2)(b) to give the Authority relevant information for performing its function.
- (2) The person must comply with the notice.
- Maximum penalty: 50 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

23B Misleading information or document

- (1) A person must not give the Authority misleading information.
- Fault elements:
- The person:
- (a) intentionally gives the information to the Authority; and
- (b) knows the information is misleading.
- Maximum penalty: 200 penalty units.
- (2) A person must not give the Authority a document containing misleading information.

Fault element:

The person:

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

Maximum penalty: 200 penalty units.

- (3) Subsection (2) does not apply if the person, when giving the document:
 - (a) draws the misleading aspect of the document to the attention of the Authority; and
 - (b) to the extent to which the person can reasonably do so – gives the Authority the information necessary to remedy the misleading aspect of the document.
- (4) In this section:

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

10 Repeal and substitution of sections 24 and 25

Sections 24 and 25

repeal, substitute

24 Availability of advice and Agency submission

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

Note for subsection (3)

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

- (a) a trade secret; or*
- (b) other information of a business, commercial or financial nature.*

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

25 Minister to notify Authority of decision on advice

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

11 Further amendments

The Schedule has effect.

Part 3 Amendment of Environment Protection Authority Act commencing at later date

12 Act amended

This Part amends the *Environment Protection Authority Act*.

13 Repeal and substitution of section 5A (Advice about ongoing systemic issues)

Section 5A

repeal, substitute

5A Advice about ongoing systemic issues

- (1) For achieving its function, the Authority is to:

-
- (a) review and assess:
- (i) the extent to which, and how, a recommendation under the Administrative Procedures for a particular proposed action has been given effect; and
 - (ii) the effectiveness of the environmental conditions of an environmental authority for the proposed action; and
- (b) review and assess the effectiveness of Agency responses in dealing with environmental incidents and the coordination of the responses; and
- (c) monitor and assess the cumulative impacts of development in the Territory; and
- (d) publicly release reports on environmental quality.
- (2) Before giving advice about the operations of an Agency arising out of a review and assessment under subsection (1)(a) or (b), the Authority must:
- (a) give a copy of the proposed advice to the Chief Executive Officer of the Agency; and
 - (b) invite the Chief Executive Officer of the Agency to make a written submission (an **Agency submission**) relating to the advice within a reasonable stated period.
- (3) To avoid doubt, the monitoring and assessment of the cumulative impacts of development do not extend to:
- (a) the monitoring of discharges of pollution from a particular place; or
 - (b) the monitoring of compliance with legislation relating to pollution from a particular place.

Note for subsection (3)

Legislation that deals with these matters include the Marine Pollution Act, Mining Management Act, Waste Management and Pollution Control Act and Water Act.

- (4) In this section:

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

recommendation includes a comment and a suggestion.

Schedule Further amendments of Environment Protection Authority Act 2007

section 11

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
Part 2, Division 1, heading	functions,	function,
sections 6(1) and 7(1)	functions	function
section 8(2)	or recommendation	
sections 10(2) and 15(1)	functions	function
