

**NORTHERN TERRITORY OF AUSTRALIA**

**NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY  
AMENDMENT ACT 2018**

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**Act No. 27 of 2018**

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 27 of 2018

An Act to amend the *Northern Territory Environment Protection Authority Act*

[Assented to 29 November 2018]

[Introduced 23 August 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

## 1 Short title

This Act may be cited as the *Northern Territory Environment Protection Authority Amendment Act 2018*.

## 2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

## 3 Act amended

This Act amends the *Northern Territory Environment Protection Authority Act*.

## 4 Section 3 amended (Definitions)

### (1) Section 3

*insert (in alphabetical order)*

***statement of intent*** means a statement made under section 24B.

- 
- (2) Section 3, at the end

*insert*

*Note for section 3*

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

## **5 Section 8 amended (Functions and powers)**

- (1) Section 8(1)(c)

*omit*

by

*insert*

under

- (2) Section 8(3)(b) and (4)

*omit, insert*

(b) ensure the NT EPA's processes are transparent and consistent in order to provide greater certainty for businesses and the community.

## **6 Section 10 amended (Membership)**

Section 10(1)(a)

*omit*

5 members

*insert*

at least 4 and not more than 7 members

## **7 Section 13 amended (Leave of absence)**

Section 13

*omit*

EPA.

*insert*

EPA for a period not exceeding 12 months.

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**8 Section 13A inserted**

After section 13

*insert*

**13A Acting members**

- (1) If an appointed member is granted a leave of absence under section 13, the Minister may appoint a person to act as the member during the period of absence.
- (2) The Minister may appoint a person to act as an appointed member under subsection (1) if:
  - (a) the person is not a public sector employee; and
  - (b) the Minister is satisfied that the person has skills, knowledge or experience similar to the appointed member for whom the person is to act.
- (3) Before appointing a person to act as an appointed member under subsection (1) the Minister:
  - (a) may have regard to the criteria mentioned in section 10(3)(a); and
  - (b) must have regard to the criteria mentioned in section 10(3)(b).
- (4) The Minister may only appoint a person under subsection (1):
  - (a) for a single period not exceeding 12 months; or
  - (b) for consecutive periods totalling not more than 12 months.
- (5) A person appointed to act as an appointed member is eligible for appointment as a member.

**9 Section 15 amended (Termination of appointment)**

After section 15(1)(d)

*insert*

- (da) if the person is, will be or is likely to be absent from duty for a period of more than 12 consecutive months, whether or not the person has been granted leave under section 13; or

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**10 Part 2A inserted**

After section 24

*insert*

**Part 2A Statement of intent****24A Statement of intent**

- (1) At least once every 2 years, the NT EPA must provide the Minister with a statement of intent for the next 2 years.
- (2) The statement must specify the following:
  - (a) the NT EPA's priorities for the period covered by the statement;
  - (b) how the NT EPA's priorities relate to the objectives of the NT EPA;
  - (c) the nature and scope of the activities it intends to carry out to meet the NT EPA's priorities during the period covered by the statement;
  - (d) the manner in which the NT EPA's priorities contribute to the Territory's objectives in relation to environmental management and economic development.
- (3) The statement may include any other matters the NT EPA considers appropriate.

**24B Making statement**

- (1) The NT EPA must consult with the Minister in the preparation of a statement of intent.
- (2) A statement must be in writing and signed by the chairperson.
- (3) A statement takes effect on the day on which it is accepted by the Minister.
- (4) The Minister must accept a statement provided by the NT EPA unless the activities described in the statement are not consistent with the objectives of the NT EPA.
- (5) A statement may be amended or revoked and replaced at any time by following the process in subsections (1) to (4).

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**24C      Publication**

- (1) As soon as practicable after a statement of intent is accepted by the Minister, the NT EPA must make a copy of the statement available to the public in the way it considers appropriate.
- (2) The Minister must table a copy of the statement in the Legislative Assembly within 6 sitting days after accepting the statement.

**24D      Regard to statement of intent**

The NT EPA must have regard to a statement of intent in exercising its powers and performing its functions.

**11      Part 3, Division 1 heading and section 25AA inserted**

After Part 3, heading

*insert*

**Division 1      Advice and reports on general matters**

**25AA      Regard to principles of ecologically sustainable development**

- (1) In providing advice or a report to the Minister under this Division, the NT EPA must have regard to the principles of ecologically sustainable development the NT EPA considers relevant to the advice or report.
- (2) The principles of ecologically sustainable development are the following:
  - (a) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
  - (b) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
  - (c) decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations;
  - (d) where 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;
  - (e) cost effective and flexible measures should be adopted, such as improved valuation, pricing and incentive mechanisms.

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**12 Section 26 amended (Consultation and matters for consideration)**

(1) Section 26, heading

*omit*

**Consultation and matters**

*insert*

**Matters**

(2) Section 26(e)

*omit*

(3) Section 26(f)

*omit*

economic

(4) Section 26(f), after "Territory"

*insert*

, including economic policies and priorities

**13 Section 27 repealed (Response to advice)**

Section 27

*repeal*

**14 Section 28 amended (Environmental quality reports)**

After section 28(2)

*insert*

- (3) A report under this section may include recommendations in relation to any aspect of environmental quality in the Territory.



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**15 Section 28A inserted**

After section 28

*insert*

**28A Reports on system of environmental management**

- (1) The NT EPA must, at the request of the Minister, inquire into and report to the Minister on any aspect of the Territory's system of environmental management or its outcomes.
- (2) In addition, the NT EPA may, on its own initiative, inquire into and report to the Minister on any aspect of the Territory's system of environmental management or its outcomes.
- (3) A report under this section may include recommendations in relation to any aspect of the Territory's system of environmental management.
- (4) In this section:

***system of environmental management*** means the system of legislation, policy and practices related to the management of the environment.

**16 Section 29 amended (Availability of advice and reports)**

Section 29(1)

*omit*

Part

*insert*

Division

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**17 Section 29A and Part 3, Division 2 and Division 3 heading inserted**

After section 29

*insert*

**29A Response to advice or report**

- (1) If the NT EPA gives advice or a report to the Minister under this Division, the Minister must, as soon as practicable, but within 6 months after receiving the advice or report:
  - (a) give the NT EPA a written response to the advice or report; and
  - (b) if the Minister has not followed, or does not intend to follow, the advice or a recommendation contained in the report – include in the response reasons why the Minister has not implemented, or does not intend to implement, the advice or recommendation.
- (2) The NT EPA may make copies of the written response available to the public in the way it considers appropriate.
- (3) However, the NT EPA must withhold from the public information of a commercially confidential nature.

**Division 2 Advice on specific matters**

**29B Advice of NT EPA on specific matters**

The NT EPA must, at the request of a Minister, advise that Minister about any proposal, policy, plan or other measure to manage the environmental impact of development on the environment.

**29C Matters for consideration**

In providing advice under section 29B, the NT EPA:

- (a) must have regard to any criteria specified in the request for advice; and
- (b) may have regard to any other matters the NT EPA considers relevant.

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**29D Availability of advice**

- (1) After the NT EPA gives advice to a Minister under this Division, it may make copies of the advice available to the public in the way it considers appropriate.
- (2) However, the NT EPA must withhold from the public information of a commercially confidential nature.
- (3) In addition, before making the advice available to the public, the NT EPA must give the Minister who requested the advice reasonable notice of its intention to do so.

**Division 3 Inquiries**

**18 Sections 31 and 32 replaced**

Sections 31 and 32

*repeal, insert*

**31 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 misleading 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 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) In this section:

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

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

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

- (a) a member;
- (b) a staff member provided to the NT EPA under section 37(1);
- (c) a person who provides a service that is connected with the administration of this Act to or for the NT EPA.

## **32 Offence to disclose certain information**

- (1) A person commits an offence if:
  - (a) the person obtains:
    - (i) information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; or
    - (ii) information connected with the administration of this Act in the course of providing a service to or for the NT EPA; and

- 
- (b) the information is confidential and the person is reckless in relation to that circumstance; and
  - (c) the person intentionally engages in conduct; and
  - (d) the conduct results in the disclosure of the information and the disclosure is not:
    - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
    - (ii) to a person who is otherwise entitled to the information; and
  - (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

*Note for section 32*

*In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

## **19 Section 33 amended (Annual report)**

After section 33(1)

*insert*

- (1A) The report must include information regarding the activities carried out by the NT EPA under a statement of intent in force during the financial year.

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**20 Part 7 inserted**

After section 39

*insert*

**Part 7 Transitional matters for Northern Territory  
Environment Protection Authority Amendment  
Act 2018**

**40 Definitions**

In this Part:

***commencement*** means the day on which the *Northern Territory Environment Protection Authority Amendment Act 2018* commences.

**41 Advice and reports of NT EPA**

Part 3, as in force immediately before the commencement, continues to apply in relation to the following:

- (a) advice of the NT EPA under section 25(1) of the Act if the advice was requested by the Minister before the commencement;
- (b) an inquiry and report of the NT EPA under section 28(1) of the Act if the inquiry and report was requested by the Minister before the commencement;

**42 Offences – before and after commencement**

- (1) Sections 31 and 32, as amended by the *Northern Territory Environment Protection Authority Amendment Act 2018*, apply only in relation to offences committed after the commencement.
- (2) Sections 31 and 32, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

**21 Repeal of Act**

This Act is repealed on the day after it commences.