

Serial 63
Northern Territory Environment Protection Authority Amendment Bill 2018
Ms Lawler

A Bill for an Act to amend the *Northern Territory Environment Protection Authority Act*

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY
AMENDMENT ACT 2018

Act No. [] of 2018

Table of provisions

1	Short title	1
2	Commencement	1
3	Act amended	1
4	Section 3 amended (Definitions).....	1
5	Section 8 amended (Functions and powers)	2
6	Section 10 amended (Membership).....	2
7	Section 13 amended (Leave of absence)	2
8	Section 13A inserted	3
	13A Acting members	
9	Section 15 amended (Termination of appointment).....	3
10	Part 2A inserted.....	4
	Part 2A Statement of intent	
	24A Statement of intent	
	24B Making statement	
	24C Publication	
	24D Regard to statement of intent	
11	Part 3, Division 1 heading and section 25AA inserted	5
	Division 1 Advice and reports on general matters	
	25AA Regard to principles of ecologically sustainable development	
12	Section 26 amended (Consultation and matters for consideration).....	6
13	Section 27 repealed (Response to advice).....	6
14	Section 28 amended (Environmental quality reports).....	6
15	Section 28A inserted	7
	28A Reports on system of environmental management	
16	Section 29 amended (Availability of advice and reports)	7
17	Section 29A and Part 3, Division 2 and Division 3 heading inserted.....	8
	29A Response to advice or report	
	Division 2 Advice on specific matters	
	29B Advice of NT EPA on specific matters	
	29C Matters for consideration	
	29D Availability of advice	
	Division 3 Inquiries	

18	Sections 31 and 32 replaced	9
	31 Misleading information	
	32 Offence to disclose certain information	
19	Section 33 amended (Annual report)	11
20	Part 7 inserted	12
	Part 7 Transitional matters for Northern Territory Environment Protection Authority Amendment Act 2018	
	40 Definitions	
	40 Advice and reports of NT EPA	
	41 Offences – before and after commencement	
21	Repeal of Act	12



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

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

[Assented to [] 2018]
[Introduced [] 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.

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

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).

24C Publication

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.

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.

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.

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

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.

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.

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.

40 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;

41 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.