

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY BILL 2012

SERIAL NO. 7

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LANDS, PLANNING AND THE ENVIRONMENT

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Bill repeals the *Environment Protection Authority Act 2007* (No 24 of 2007) and the *Environment Protection Authority Amendment Act 2010* (No 5 of 2010) and establishes a new *Northern Territory Environment Protection Authority Act 2012*.

The Bill establishes a new Northern Territory Environment Protection Authority (NT EPA) as a body corporate, legally independent from Government, and with executive powers to undertake environmental assessment, and compliance and enforcement activities.

It also makes a number of consequential amendments to the *Waste Management and Pollution Control Act*, the *Environmental Assessment Act*, the Waste Management and Pollution Control Regulations, and the Environmental Assessment Administrative Procedures to provide the NT EPA with powers to administer that legislation.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

The clause specifies that the name of the Act is the *Northern Territory Environment Protection Authority Act 2012*.

Clause 2. Commencement

This clause specifies that the Act will commence on the day fixed by the Administrator.

Clause 3. Definitions

This clause defines terms used within the Act including:

- “advise” includes “to make a recommendation”.
- “appointed member” means a member appointed by the Administrator to be a member of the NT EPA. It does not include the Chair of the Northern Territory Planning Commission (NTPC) who is an *ex officio* member of the NT EPA.
- “chairperson” means the person appointed to be the chairperson of the NT EPA. Under clause 12(1), the chairperson is appointed by Administrator. Under clause 12(3), the Minister may appoint a person to be the chairperson during a vacancy in the position of chairperson or where the chairperson is unable to perform the duties of the position.
- “ecologically sustainable development” is defined as meaning “using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained, and the total quality of life now and in the future can be increased”. This is the definition specified in the National Strategy for Ecologically Sustainable Development which has been adopted by the Territory.
- “environment” is defined broadly and means “all aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects”. This is consistent with the definition of “environment” under the *Environmental Assessment Act*.
- “Planning Commission” means the Northern Territory Planning Commission established under the *Planning Act*.

Clause 4. Act binds Crown

This clause means that the Northern Territory Government and its agencies must comply with the Act. The intent is that the Act will apply to all other Governments and their agencies to the extent that it is possible for the Northern Territory Parliament to make laws that bind other Governments.

Clause 5. Application of Criminal Code

This clause specifies that Part IIAA of the Criminal Code applies to offences against the Act.

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

Part IIAA, at section 43AM, specifies that unless otherwise stated the fault elements required to prove an offence are:

- in relation to an element of conduct – intention; and
- in relation to an element of result or circumstance – recklessness.

The offences contained in the Bill use these fault elements.

Part 2 Northern Territory Environment Protection Authority

Division 1 Establishment

Clause 6. NT EPA established

This clause establishes the NT EPA as a body corporate with perpetual succession that is capable of holding property, entering into contracts, and suing and being sued. This creates the NT EPA with its own legal identity separate from the Northern Territory of Australia. It demonstrates the

independence of the NT EPA from Government.

Division 2 Objectives, functions and powers of NT EPA
Clause 7. Objectives of the NT EPA

This clause specifies the objectives of the NT EPA as being to:

- (a) promote ecologically sustainable development;
- (b) protect the environment, having regard to the need to enable ecologically sustainable development;
- (c) promote effective waste management and waste minimisation strategies; and
- (d) enhance community and business confidence in the environmental protection regime of the Territory.

These objectives provide context and guidance as to the role of the NT EPA and will inform the NT EPA in the exercise of its powers and functions.

Clause 8. Functions and Powers

Subclause (1) specifies the functions of the NT EPA. These are to:

- (a) advise and report to the Minister in accordance with Part 3 of the Act. Part 3 details the types of reports that can be provided to the Minister, and the responsibilities of the NT EPA in developing a report, and the responsibilities of the Minister once a report has been received. Under the definitions of the Act, “advise” includes making recommendations to the Minister.
- (b) undertake functions associated with environmental assessments and the management of waste and pollution conferred on the NT EPA under this or any other Act. In accordance with consequential amendments under the Bill, currently these are functions under the *Environmental Assessment Act* and *Waste Management and Pollution Control Act*. The provision is drafted to allow the NT EPA to undertake functions conferred by another Act; and
- (c) any other function that may be conferred by this Act or another Act. This would include, for example, functions under the *Environment Protection (Beverage Containers and Plastic Bags) Act*.

Subclause (2) specifies that the NT EPA has the powers necessary or convenient to perform its functions, whether under this Act or another Act.

Subclause (3) identifies that in performing its powers and functions, the NT EPA must:

- (a) encourage community involvement and engagement; and
- (b) ensure transparent processes and provide certainty to business.

Subclause (4) provides that the NT EPA must integrate both long-term and short-term economic, environmental and social equity considerations in its decision making.

These subclauses give guidance to the NT EPA as to how it is expected to undertake its role and the considerations and actions expected of it.

Clause 9. Independence

This clause establishes the independence of the NT EPA by specifying that the NT EPA and its members cannot be directed by the Minister in undertaking any of its powers or functions.

Division 3 Constitution and membership
Clause 10. Membership

This clause specifies the number of members of the NT EPA and the matters that must be considered by the Administrator when appointing members to the NT EPA.

The NT EPA consists of the Chair of the Northern Territory Planning Commission (NTPC) and five (5) members appointed by the Administrator.

The Chair of the NTPC is appointed under the *Planning Act* and the general qualifications required of members do not apply to the Chair of the NTPC. The Chair of the NTPC is an ‘*ex officio*’ member of the NT EPA which means that whoever holds the position of Chair of the NTPC from time to time, is the person who is the member of the NT EPA.

To preserve the independence of the NT EPA, subclause (2)(a) specifies that the members of the NT EPA cannot be public sector employees.

When appointing members to the NT EPA, the Administrator is required under subclause (2)(b) to consider whether or not a particular person has skills, knowledge, qualifications or experience in areas relevant to the functions of the NT EPA, including for example, environmental science and management, social and economic analysis, environmental law and management of regulatory responsibilities.

Under subclause (3)(a), the Administrator may also consider whether the person brings particular skills, knowledge or experience in regional areas or issues, Indigenous issues or in working with the community.

When initially appointing members or appointing new members, the Administrator will be required to consider the members of the NT EPA holistically to ensure that, at all times, the members represent the range of skills and knowledge necessary for an effective NT EPA (subclause (3)(b)).

Clause 11. Chairperson

This clause specifies that the Administrator appoints a member of the NT EPA to be the Chairperson.

Subclause (2) provides that the Administrator may terminate a person’s appointment as Chair, without terminating their appointment as a member. While such termination would be available under section 44 of the *Interpretation Act*, it has been included in the Bill to avoid any doubt in this area.

Subclause (3) provides that the Minister may appoint another member to act in the role of chairperson

during a vacancy in the office of chairperson, or during a period when the Chair appointed by the Administrator is unable to perform the duties of the office. This subclause has been included in recognition that there are circumstances that may make the Chair unavailable for a period of time, either through termination of the role of Chair or other unforeseen circumstances, such as illness, where it is not desirable for the position to remain vacant. For example, the Chair may be taken unexpectedly ill but there is a matter that needs to be considered by the NTPC. In this instance, an acting Chair would be able to participate in the meetings of the NTPC on behalf of the NT EPA.

Subclause (4) limits appointment by the Minister under subclause (3) to a period of six months. The appointment may be for a single period not exceeding six months, or for consecutive periods not exceeding six months. Six months is considered sufficient period to identify a replacement Chair if necessary, or for the unforeseen circumstance to be resolved. While a member may be appointed a number of times as the acting Chair, these appointments are not intended to be for long periods nor consecutive in nature. The provision is not designed to provide an alternative to appointment by the Administrator.

Clause 12. Duration of appointment

This clause specifies that members are appointed by the Administrator.

Subclause (1)(a) specifies that members may be appointed for any period up to three years. This provides flexibility in the period of appointment for members.

Subclause (1)(b) specifies that a member is appointed in accordance with any conditions determined by the Administrator. This allows the Administrator to make conditions regarding a particular member's appointment. Conditions could include, for example, that the member is appointed for two years and on a 'part-time' basis.

Subclause (2) specifies that members may be reappointed. No limits have been placed on the number of times a person can be reappointed, but in determining whether to reappoint a member the Administrator will again be required to consider the matters specified in clause 11.

The clause does not apply to the Chair of the NTPC, who is an *ex officio* member and appointed in accordance with the *Planning Act*.

Clause 13. Leave of absence

This clause provides that the NT EPA can grant a member a leave of absence.

The clause does not specify any conditions for a leave of absence. The NT EPA is able to determine the conditions that apply to any leave of absence which may be granted.

Under clause 17, the NT EPA is able to make procedures relevant to its functioning. Procedures would include, for example, information on the circumstances in which a leave of absence may be granted by the NT EPA and the process through which leave is to be requested.

The clause provides flexibility for NT EPA members by recognising that circumstances may change from those existing at the time of the original appointment and which necessitate a leave of absence being granted.

Clause 14. Vacation of office

This clause specifies the circumstances in which a member's appointment will cease.

This may be because the member has chosen to resign or their term of appointment is complete and they have not been reappointed by the Administrator. It also applies where the person takes a position within the public sector.

Alternatively, it may be because circumstances are such that it would not be in the public interest for the person to continue as a member because:

- (a) the member has been convicted of an indictable offence, that is an offence that carries a penalty of two years or more of imprisonment, regardless of whether the member is imprisoned;
- (b) the member has been sentenced to a period of imprisonment; or
- (c) the Administrator has determined to terminate the member's appointment in accordance with clause 16.

Subclause (2) identifies that the exercise of powers and functions by the NT EPA are not affected by vacancies in appointments. This recognises that a member may resign or a position may otherwise become vacant but that the business of the NT EPA will need to continue during that vacancy.

Clause 15. Termination of appointment

This clause identifies the circumstances under which the Administrator may determine to terminate the appointment of a member of the NT EPA.

While these circumstances do not automatically disqualify a member from continuing as part of the NT EPA, they warrant consideration as to whether it is in the public interest for the member to continue in that role.

Under subclause (1), the grounds for termination include where the member:

- (a) has acted in a manner that constitutes misbehaviour or misconduct;
- (b) is unable to satisfactorily perform the duties required due to physical or mental inability;
- (c) has not, in the opinion of the Administrator, disclosed relevant interests as required by the Act when undertaking their functions under Act. For example, not disclosed a financial interest in a business that is being considered for a licence under the *Waste Management and Pollution Control Act*;

- (d) has been absent for three consecutive meetings of the NT EPA other than in accordance with leave granted by the NT EPA;
- (e) has been found guilty of an offence of such a nature that it would be inappropriate for them to continue as part of the NT EPA. This may include for example an offence against a piece of environmental legislation, whether administered by the NT EPA or another Northern Territory agency. The offences contemplated by this section include regulatory and simple offences. That is, unlike the automatic disqualification provisions in clause 15, these do not have to be indictable offences; and
- (f) has become bankrupt, applied to become bankrupt or otherwise made arrangements with creditors.

Subclause (3) defines “misconduct” inclusively to encompass where the members of the NT EPA are not acting in accordance with the objectives of the NT EPA or not performing the functions of the NT EPA. This has been included to avoid doubt in circumstances where the Administrator may wish to remove a member who is not acting in a way that advances the objectives of the NT EPA. It is not intended in any way to limit the types of matters or circumstances that may be determined by the Administrator to constitute ‘misconduct’.

To avoid doubt, subclause (2) specifies that any termination under these provisions must be in writing.

Division 4 Procedures of NT EPA
Clause 16. Procedures

This clause specifies that, subject to the Act, the NT EPA can decide its own procedures. This is relevant to how the NT EPA operates and provides a wide discretion to determine the processes and practices to be adopted. For example, the NT EPA may develop procedures applicable to holding meetings via teleconference.

The restrictions placed on the NT EPA within the Act are those specified in the remainder of this Division (clauses 18 to 25) and include matters such as the minimum number of meetings that must occur during a year, voting and obligations to keep records. This Division also identifies the obligations on members to disclose interests and the responsibility of the NT EPA once interests have been disclosed.

Clause 17. Meetings

This clause specifies that the NT EPA must hold at least four (4) meetings per year (subclause (2)(a)).

In addition, the Chair may convene a meeting at any time and must convene a meeting at the request of another member (subclauses (1) and (2)(b)).

There is no upper limit on the number of meetings that may be held.

There are also no restrictions on the manner in which meetings may be held, which means the NT EPA may, for example, undertake meetings via teleconference.

Subclause (3) requires the Chair to convene a meeting on or as soon as practicable after the date requested by the member requesting the meeting. A member must give at least seven days notice of the proposed meeting date.

Clause 18. Quorum at meetings

This clause specifies that a majority of members present at a meeting constitutes the quorum for the meeting. This ensures that the NT EPA can undertake deliberations and make decisions even where one or more members is unavailable for a specific meeting.

However, where one or more members at a meeting have disclosed an interest in a matter being considered by the NT EPA, those members are prevented from participating in the NT EPAs deliberations on that matter (see clause 24). In those circumstances, quorum is the majority of members who are entitled to participate in the deliberations (see clause 24(1)(c)).

Clause 19. Presiding member at meetings

This clause identifies that the Chairperson is to preside at meetings. If the Chair is not present, the members are to elect a person to preside over the meeting.

The purpose of the clause is simply to clarify the responsibilities in this area.

Clause 20. Voting at meetings

This clause provides that a decision of the NT EPA is to be decided by majority vote. To avoid deadlocks, the person presiding at the meeting is able to cast a deciding vote.

Clause 21. Records of meetings

This clause requires the NT EPA to keep records of its meetings. This is good practice and necessary to ensure appropriate governance of the NT EPA.

Clause 22. Disclosure of interest

This clause requires a person who has an interest in a matter before the NT EPA to declare the interest. The clause specifies when the notice is to be given, the way in which it is to be given and the details that it must include.

The clause specifies that the interest must be greater than an interest shared generally with the public or community.

Under subclause (5), “personal interest” in a matter is where:

- (a) the member has a direct or indirect financial interest in the matter; or
- (b) the member has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

Clause 23. Effect of personal interest

This clause identifies the consequences of disclosing an interest which are:

- (a) the member cannot participate in any discussions or deliberations about the matter;
- (b) the member is disregarded for the purposes of determining quorum; and
- (c) quorum for that matter is the majority of members able to participate in the deliberation or decision.

This clause is designed to ensure that conflicts or perceptions of bias do not arise in the decisions of the NT EPA. The clause must be considered in conjunction with clause 25.

Subclause (2) provides that a members' failure to disclose the interest does not, of itself, invalidate the NT EPA's decision. This is designed to ensure that decisions are not invalidated because a member did not recognise that they had a personal interest or inadvertently failed to disclose an interest. This also ensures that, in order for a decision to be invalidated, in addition to the failure of the member to disclose the interest, there must have been another error in law in the making of the decision.

Clause 24. Limitation on challenge to decision of member

This clause limits the ability of a person to challenge or appeal a decision by the NT EPA on the basis that a member of the NT EPA participated in discussions of the NTPC.

The clause is designed to allow the Chair of the NT EPA to substantially participate in the business of both the NT EPA and the NTPC, without the duality of the role giving rise to legal challenge.

The clause applies to all relevant decisions of the NT EPA, for example, recommendations in an assessment report under the *Environmental Assessment Report* or licensing decisions under the *Waste Management and Pollution Control Act*.

Part 3 Advice and reports of NT EPA

Clause 25. Advice of NT EPA

This clause specifies that, on the request of the Minister, the NT EPA must provide advice about:

- (a) achieving appropriate and effective environmental policy and management for the Territory;
- (b) legislation related to the environment and its administration;
- (c) issues affecting the Territory's capacity to achieve ecologically sustainable development;
- (d) emerging environmental issues;
- (e) the cumulative impacts of development on the environment;
- (f) any other matter related to the objects of the Act.

The clause also specifies that the NT EPA may, on its own initiative, advise the Minister about any of

those matters.

The clause is designed to give guidance to the Minister and the NT EPA on the types of advice that it will be expected to provide as a matter of course. The areas specified are those that are relevant to ensuring the most effective, efficient and appropriate environmental management framework for the Territory. The types of advice are relevant to the NT EPA's role as the environmental regulator for the Territory.

Clause 26. Consultation and matters for consideration

The clause specifies a number of matters to which the NT EPA may have regard in developing advice. These are matters of importance to the Territory, but which may not be relevant in all circumstances. By identifying these matters in the Act, the NT EPA is given further guidance as to the context in which it provides advice.

Clause 27. Response to advice

This clause requires the Minister, having received advice or a report under section 26, to, as soon as practicable but within six months, provide the NT EPA with a response to the advice. The Minister is not required to follow or act on the advice of the NT EPA but must advise the NT EPA of the reasons for any decision to ignore or not follow the advice.

Six months is considered sufficient time to allow the Minister, and Government, to consider the advice while at the same time providing certainty to the NT EPA and the public on the outcomes of advice provided by the NT EPA.

Including an obligation for the Minister to provide reasons for not accepting advice, increases transparency in Ministerial decision making, and recognises that Minister's must make decisions that are for the benefit of the Territory as a whole; an obligation that requires Minister's to consider advice from many sources and which may not fully accord with the advice from one particular agency. At the same time, the obligation provides accountability for the NT EPA to be accurate and objective in the advice it provides.

To further ensure transparency, subclause (2) provides that the NT EPA may publish the Minister's response and reasons.

Clause 28. Environmental quality reports

This clause identifies that the NT EPA must, if requested by the Minister, or may on its own initiative, report on environmental quality in the Territory. This clause is designed to allow the NT EPA to provide reports on the "state of the environment" in the Territory generally, or on particular aspects of the environment that may be of concern or interest.

Clause 29. Availability of advice and reports

Subclause (1) provides that the NT EPA must make copies of reports and advice provided to the Minister available publicly.

Under subclause (2), the NT EPA is required to withhold information that is of a commercially confidential nature and may withhold information on other grounds if it is in the public interest to do so.

The clause is designed to ensure transparency in the advice and reports provided to the Minister whilst providing appropriate protections for confidential information.

Before making a report available publicly, subclause (3) states that the NT EPA must give the Minister reasonable notice of its intention. This provides the Minister with appropriate notice of the actions of the NT EPA without compromising the independence of the information that is provided.

Subclause (4) requires that the Minister table a copy of the advice or report in the Legislative Assembly within six Sitting days of receiving the information. This provides legislative oversight of the information provided to the Minister by the NT EPA which is desirable for transparency and to ensure the appropriate functioning of the NT EPA. Commercial information is protected and can be excluded from the tabled report.

Under subclause (5), advice or reports of an administrative or preliminary nature do not need to be tabled. This will ensure that only advice that has been finalised is submitted to the Assembly. It also clarifies that there is no intention for advice that is of a purely administrative nature to be tabled in the Assembly.

Clause 30. Conduct of inquiries

This clause allows the NT EPA to conduct inquiries in order to perform its functions.

The clause also allows the NT EPA to:

- (a) require a person to provide advice or information. Under subclause (3) it is an offence not to provide information when requested. Under Part 4 of the Bill it is an offence to provide misleading information; and
- (b) ask a person with particular knowledge or experience to assist it to conduct an inquiry.

The clause is designed to give the NT EPA the power it needs to ensure that the advice and reports it develops are as accurate and evidence based as possible.

Including the offences at subclause (3) and Part 4 recognises the importance of the NT EPA receiving accurate information from others in fulfilling its responsibilities.

The offence at subclause (3) is an offence of strict liability with a maximum penalty of 50 penalty units. This is the standard penalty applied for offences of this nature in Northern Territory legislation.

It is a defence if the person can establish a reasonable excuse. Such an excuse may, for example, be that the person does not have the information requested.

Subclause (6) states that a person cannot refuse to provide information on the grounds that it may be self incriminatory. Under subclause (7), where a person is required to provide information because of a notice issued under this clause, the information that is provided cannot be used against a natural person (individual) in a prosecution. That is, if the information is obtained from a body corporate and it identifies that an offence may have been committed, the information can be used as part of any legal action relating to that offence. If however the information was obtained from a natural person, the information cannot be used as part of any legal action relating to the offence.

The protection provided to natural persons is consistent with the common law and relevant principles in the *Evidence (National Uniform Legislation) Act 2011*.

Part 4 Offences

Clause 31. Misleading information or document

This clause makes it an offence for a person to intentionally provide information that the person knows is misleading to the NT EPA. The offence carries a maximum penalty of 200 penalty units. This is the standard penalty applied for offences of this nature in Northern Territory legislation.

The clause also makes it an offence for a person to intentionally provide a document that the person knows is misleading to the NT EPA.

This offence also carries a maximum penalty of 200 penalty units. This is the standard penalty applied for offences of this nature in Northern Territory legislation.

The offence does not apply if the person, in giving the document to the NT EPA drew the misleading information to the attention of the NT EPA and provided, as much as possible, more accurate information.

Clause 32. Confidentiality of information

Subclause (1) provides that it is an offence for a member of the NT EPA to disclose information that has been obtained in their role as part of the NT EPA.

The offence carries a maximum penalty of 200 penalty units or 2 years imprisonment. This is the standard penalty applied for offences of this nature in Northern Territory legislation.

Subclause (2) provides a number of defences to the offence in subclause (1), including where the disclosure of information is required for the exercise of the person's powers or the performance of the person's functions as a member, occurs with the consent of the relevant person or is required for the purpose of legal proceedings.

The offence and the level of penalty are required on public policy grounds and reflects the importance of members of the NT EPA perform their duties and responsibilities in a manner that ensures confidential information is not disclosed.

Subclause (3) provides that it is an offence for a person acting on behalf of, or performing duties for, the NT EPA to disclose information that has been obtained in their role.

The offence carries a maximum penalty of 200 penalty units or 2 years imprisonment. This is the standard penalty applied for offences of this nature in Northern Territory legislation.

Subclause (4) provides a number of defences to the offence in subclause (3), including where the disclosure of information is required for the Administration of the Act, occurs with the consent of the relevant person or is required for the purpose of legal proceedings.

The offence and the level of penalty are required on public policy grounds and reflect the importance of person's acting on behalf of the NT EPA to not act in a way that could result in confidential information being disclosed.

Part 5 Administrative matters

Clause 33. Annual report

This clause requires the preparation of an annual report on the functions of the NT EPA during the financial year. The report is to be provided to the Minister by 31 October of each year. The Minister is to table the report in the Legislative Assembly within six Sitting days of receiving the report.

This is a standard clause required to ensure the NT EPA is reporting on its activities consistent with annual reporting obligations of similar entities.

Clause 34. Guidelines

This clause specifies that the NT EPA may make Guidelines that are not inconsistent with the Act. This allows the NT EPA to determine the processes and practices it will adopt in administering its powers and functions.

Guidelines will provide greater certainty for business, industry and the community by clearly articulating the NT EPAs approach to certain matters, for example, the NT EPA approach to

enforcement and compliance or how it will undertake consultation with the community.

Clause 35. Protection from liability

This clause specifies that the members of the NT EPA are not civilly or criminally liable for actions done (or not done) in good faith in the exercise of powers and functions under the Act.

The clause is designed to protect the members from legal actions that may be brought against them personally because of their membership of the NT EPA.

It is a standard clause of statutory bodies of this type and is required in the interests of attracting appropriately qualified persons to the membership of the NT EPA.

The clause does not, and is not intended, to prevent actions being brought against the NT EPA in its corporate name.

Clause 36. Delegation

This clause allows the NT EPA to delegate its powers and functions to a member of the NT EPA, a public sector employee or a Chief Executive Officer. Appropriately used, this allows the efficient and timely administration of the functions of the NT EPA.

Clause 37. Staff and facilities for NT EPA

This clause requires the Chief Executive Officer (which is defined in section 3 of the *Public Sector Employment and Management Act*) to provide the NT EPA with the staff and facilities required for it to properly perform its powers and functions. The NT EPA consists of the six members specified in clause 11.

It is serviced by staff provided by the Department with responsibility for the NT EPA Act under the Administrative Arrangements Orders. This clause ensures that the Chief Executive Officer of that Department (currently Lands, Planning and the Environment) provides the staff required for the NT EPA to fulfil its role.

Subclause (2) provides that the staff are only subject to the direction of the Chair when performing the functions and duties for the NT EPA. This ensures the independence of the NT EPA in performing its functions, such as making licensing decisions, is retained.

Clause 38. Regulations

This clause provides that the Administrator may make regulations under the Act.

Part 6 Repeals and transitional matters for Northern Territory Environment Protection Authority Act 2012

Division 1 Repeals

Clause 39. Repeal

This clause repeals the *Environment Protection Authority Act 2007* and the *Environment Protection Authority Amendment Act 2010*.

It is a technical clause that is required because this Bill replaces the old Act with a new NT EPA.

Division 2 Transitional matters
Clause 40. Definitions

This clause specifies that for the purpose of the Division, “commencement day” is the day on which the Act commences. It is a technical clause.

Clause 41. Transitional regulations

This clause provides for the development of regulations required to address matters of a transitional nature arising from the enactment of the Act or otherwise to allow or facilitate the transition to the operation of the Act.

Under subclause (2), any regulations that are made may apply retrospectively, but only to the commencement day. In keeping with the transitory nature of the section, it, and any regulations made under it, expire after one year (subclause (5)).

To avoid doubt, subclause (3) specifies that where the regulations operate retrospectively, they cannot decrease a person’s rights or impose liabilities on the person.

Clause 42. Transitional regulations under other Act

This clause is included in the event that this NT EPA Act does not make suitable or sufficient provision in relation to a specific matter under another Act that is amended by Part 7.

The clause provides that any regulation making power in another Act is to be taken to include a power to make regulations required to address matters of a transitional nature arising from these amendments.

Under subclause (3), any regulations that are made may apply retrospectively, but only to the commencement day. In keeping with the transitory nature of the section, it, and any regulations made under it, expire after one year (subclause (6)).

To avoid doubt, subclause (4) specifies that where the regulations operate retrospectively, they cannot decrease a person’s rights or impose liabilities on the person.

Part 7 Amendment of laws

This Part amends a number of other pieces of legislation to allow the NT EPA to undertake responsibilities in relation to that legislation by transferring powers and functions in that legislation to

the NT EPA.

The amendments required to each specific piece of legislation are detailed in Schedules to the Bill.

Division 1 *Environmental Assessment Act*

Clause 43. **Act amended**

This clause specifies that the *Environmental Assessment Act* (EA Act) is amended. This allows the NT EPA to administer the EA Act in accordance with its proposed functions under clause 9.

Clause 44. **Section 3 amended**

This clause inserts four additional definitions into section 3 of the EA Act. These definitions are required due to the other amendments to the EA Act. Where appropriate, the definitions are consistent with the definitions in other legislation.

Clause 45. **Section 4 amended**

This clause amends section 4 by omitting the term “Minister” and substituting it with “NT EPA”. This is a technical amendment required to give the NT EPA powers under the EA Act.

Clause 46. **Section 7 amended**

This clause makes a number of technical amendments required to give the NT EPA powers under the EA Act and to meet contemporary drafting practice. A number of references to “Minister” are substituted with “NT EPA”.

Clause 47. **Section 8 amended**

This clause makes a number of technical amendments as a consequence of contemporary drafting practice.

Clause 48. **Section 8A and 8B inserted**

This clause inserts two new sections into the EA Act designed to improve transparency in decision making. The clauses place additional reporting obligations on the responsible Minister and the Minister.

Under proposed clause 8A, where the responsible Minister makes a decision contrary to an assessment report, the responsible Minister is required to give written notice to the NT EPA of the decision and to table a statement of reasons about the decision in the Legislative Assembly. This tabling is to occur within six Sittings days of the Minister making the decision.

Under proposed clause 8B, where the Minister has received an assessment report and, in providing it to the responsible Minister, makes any comment about the report which is inconsistent with the report, the Minister is required to give written notice to the NT EPA of the comment and to table a statement of reasons about the comments in the Legislative Assembly. This tabling is to occur within

six Sittings days of the Minister making the comment.

Under both clauses, the Minister or responsible Minister is required to give to the NT EPA notice of the comment or decision, as soon as practicable but within seven days, of making the comment or decision. This is designed to ensure that the NT EPA has a record of all decisions made with reference to its advice and to generally assist the NT EPA to fulfil its role.

Overall, the clauses are designed to improve transparency in decision making, addressing community concerns around the environmental impact assessment process where the recommendations in an assessment report may not be reflected in the approval that is granted.

Clause 49. Section 10 amended

This clause replaces inserts a reference to the “NT EPA” after the word “Minister” to allow either the Minister or the NT EPA to conduct an inquiry for the purposes of undertaking an environmental impact assessment.

Clause 50. Section 12 amended

This clause makes a technical amendment in accordance with contemporary drafting practice.

Clause 51. Section 13 inserted

This clause inserts a new section 13 into the EA Act. Section 13 is titled *Transitional matters for Northern Territory Environment Protection Authority Act 2012*.

The section provides that any matter which is ongoing for which responsibility was held by the Minister but as a consequence of these amendments will be held by the NT EPA remains valid. The previous actions of the Minister are to be considered the actions of the NT EPA.

Division 2 Planning Act

Clause 52. Act amended

This clause specifies that the *Planning Act* is amended in accordance with Schedule 1.

This is required because of the way in which in the *Planning Act* is drafted. The amendments detailed in this Schedule are only required as a consequence of this Bill.

Division 3 Waste Management and Pollution Control Act

Clause 53. Act amended

This clause specifies that the *Waste Management and Pollution Control Act* (WMPC Act) is amended. This allows the NT EPA to administer the WMPC Act in accordance with its proposed functions under clause 9.

Clause 54. Part 14 inserted

This clause inserts a new Part 14 into the WMPC Act.

Part 14 is titled *Transitional matters for Northern Territory Environment Protection Authority Act 2012*.

It inserts two (2) new sections into the WMPC Act.

Section 122 defines words that are to be used in the Part, including “Administering Agency”, “Chief Executive Officer” and “commencement day”.

Section 123 provides for the continuation of ongoing matters.

Section 123(1) provides that any matter which is ongoing for which responsibility was held by the Chief Executive Officer but as a consequence of these amendments will be held by the NT EPA remains valid. The previous actions of the Chief Executive Officer are to be considered the actions of the NT EPA.

Section 123(2) provides that any matter which is ongoing for which responsibility was held by the Administering Agency but as a consequence of these amendments will be held by the NT EPA remains valid. The previous actions of the Administering Agency are to be considered the actions of the NT EPA.

Section 123(3) provides that those matters which are ongoing and for which responsibility was held by the Minister but as a consequence of these amendments will be held by the NT EPA, remain valid. The previous actions of the Minister are to be considered the actions of the NT EPA.

Clause 55. Act further amended

This clause specifies that the WMPC Act is also amended in accordance with Schedule 2.

Division 4 Environmental Assessment Administrative Procedures

Clause 56. Administrative Procedures amended

This clause specifies that the Environmental Assessment Administrative Procedures (Procedures) is amended in accordance with Schedule 3. This will allow the NT EPA to administer the Environmental Assessment Administrative Procedures in accordance with its proposed functions under clause 9.

Division 5 Waste Management and Pollution Control Regulations

Clause 57. Regulations amended

This clause specifies that the Waste Management and Pollution Control Regulations (WMPC Regulations) are amended in accordance with Schedule 4. This will allow the NT EPA to administer

the WMPC Regulations in accordance with its proposed functions under clause 9.

Division 6 Expiry of Part
Clause 58. Expiry

This clause provides that the Part expires the day after it commences.

Consequential amendments become obsolete on their commencement and there is no requirement for them to continue once they have fulfilled their role. It is therefore standard practice to include an expiration clause of this nature.

Schedule 1 *Planning Act* amended

This clause amends the *Planning Act*. These amendments are of a technical nature and required as a consequence of the new role of the NT EPA in undertaking environmental assessments.

The amendments delete the term “by the Minister administering that Act” under section 46(3)(c) which is a section that requires a development application to contain a copy of a public environment report or environmental impact statement and the results of the environmental assessment undertaken in accordance with the *Environmental Assessment Act*.

The amendments also delete the term “by the Minister administering that Act” under section 51(g) which is a section that requires a consent authority to consider a public environment report or environmental impact statement and the results of the environmental assessment undertaken in accordance with the *Environmental Assessment Act* in making a decision on a development application.

Schedule 2 *Waste Management and Pollution Control Act* amended

This clause amends the *Waste Management and Pollution Control Act* (WMPC Act).

There are four types of amendments:

1. amendments to remove the term ‘administering agency’ from the Act;
2. amendments to transfer functions and responsibilities under the WMPC Act from the Chief Executive Officer to the NT EPA;
3. amendments to transfer functions and responsibilities under the WMPC Act from the Minister for Lands, Planning and the Environment to the NT EPA; and
4. minor technical amendments.

Removal of the term Administering Agency

This is a technical amendment. The term is currently used inappropriately throughout the WMPC Act. The functions and responsibilities purportedly given to the Administering Agency are most

appropriately exercised by the NT EPA. Deletion of the term in conjunction with the other amendments will ensure that the NT EPA appropriately holds the powers and functions under the WMPC Act.

Transfer of functions from the Chief Executive Officer to the NT EPA

These amendments transfer all functions and responsibilities currently given to the Chief Executive Officer (CEO) under the WMPC Act to the NT EPA. These amendments ensure that the NT EPA takes responsibility for these functions and powers.

Transfer of functions from the Minister to the NT EPA

These amendments transfer some functions from the Minister for Lands, Planning and the Environment to the NT EPA.

The functions that are transferred relate to compliance and enforcement activities and are responsibilities in regards to:

- (a) the development, approval and amendment of compliance plans. These are plans that specify the practical difficulties being experienced by a person holding an environmental protection licence or approval in complying with a provision specified in the WMPC Regulations, or of an environment protection objective. The plans also detail a program for achieving compliance with those provisions. As a tool to ensure compliance with the WMPC Act, the responsibilities associated with these plans are most appropriately administered by the NT EPA;
- (b) entering into a performance agreement with a person who is conducting an activity that causes, or is likely to cause, pollution resulting in environmental harm or that generates or is likely to generate waste; or the owner or occupier of polluted land. Performance agreements may provide that a person is to undertake a program to protect, restore or enhance the environment or to improve waste management or the prevention, reduction, control, rectification or clean up of pollution or environmental harm resulting from pollution. These agreements are also a tool to ensure compliance with the WMPC Act, and the responsibilities associated with these agreements are therefore most appropriately administered by the NT EPA; and
- (c) determining as part of a pollution abatement notice, the remedial action to be taken to return polluted land as far as possible to a specified condition appropriate for the protection of the environment or the use of the land. The NT EPA (or an authorised officer) has the power to issue a notice and to determine the contents of the notice. The Minister has no role in the issuance of these notices and therefore should not be responsible for determining what is appropriate for purposes of remediation.

All other powers and functions of the Minister for Lands, Planning and the Environment, such as those associated with developing and approving environmental protection objectives, remain with the Minister under these amendments.

Minor technical amendments

The clause makes a number of technical amendments that are required as a consequence of the other amendments to the Act, for example, replacement of the term “he or she” with “Minister” or “NT EPA”. None of these amendments affect the intent of the WMPC Act.

Schedule 3 Environmental Assessment Administrative Procedures amended

This clause amends the Environmental Assessment Administrative Procedures (Procedures). The Procedures specify the types of formal environmental assessment that are undertaken in the Territory and the processes that apply when undertaking those assessments.

There are four types of amendments:

1. amendments to transfer functions and responsibilities relating to the environmental assessment process from the Minister for Lands, Planning and the Environment to the NT EPA;
2. amendments that clarify the role of the Minister for Lands, Planning and the Environment under the Procedures;
3. giving the Minister additional powers to comment on an assessment report; and
4. minor technical amendments.

Transfer of functions from the Minister to the NT EPA

Under these amendments the NT EPA will be responsible for all aspects of the environmental assessment process once the Minister has been informed of an action that may require assessment. This means that the NT EPA will be responsible for determining whether assessment is required, and at what level. The NT EPA will also have the ability to request further information from proponents as required to complete an assessment, and is responsible for developing the environmental impact assessment report (assessment report).

Clarifying the role of the Minister

Once an assessment is complete, the NT EPA will provide the Minister for Lands, Planning and the Environment with an assessment report. The Minister for Lands, Planning and the Environment will provide that report to the responsible Minister. Under the Procedures, the responsible Minister is defined as the Minister who is responsible for giving approval for a proposed action. This may include, for example, the Minister for Lands, Planning and the Environment if the approval is to be given under the *Planning Act* or the Minister for Mines and Energy for an approval given under the *Mining Management Act*.

The amendments do not alter the responsibilities of the responsible Minister to advise the Minister for

Lands, Planning and the Environment of a proposal that may require assessment. The amendments also do not alter the responsibility of the Minister for Lands, Planning and the Environment to advise the responsible Minister of the outcome of any environmental assessment that is undertaken.

Giving the Minister additional powers to comment on an assessment report

These provisions (new clauses 11(4), 11A(2A) and 14(3AA)) give the Minister for Lands, Planning and the Environment a specific power to make comments on an assessment report and to provide these to the responsible Minister.

These clauses have been included as a consequence of the changed role of the Minister in the environmental impact assessment process, whereby the Minister is no longer able to make comment on the assessment report during its development. The clauses ensure the Minister is able to put forward his own views on a particular assessment report.

Minor technical amendments

The Schedule makes a number of technical amendments that are required as a consequence of the other amendments to the Procedures, for example, replacement of the term “him” with “it”. None of these amendments affect the intent of the Procedures.

Schedule 4 Waste Management and Pollution Control (Administration) Regulations amended

This clause amends the Waste Management and Pollution Control (Administration) Regulations (WMPC Regulations).

The regulations identify that fees that apply for licences and approvals issued under the WMPC Act, and set out the infringement notice scheme to allow infringement notices to be issued under the WMPC Act.

The clause amends the WMPC Regulations by replacing the term “Chief Executive Officer” with the term “NT EPA”. This gives the NT EPA responsibility for the functions under the WMPC Regulations.