

Explanatory Statement

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY AMENDMENT BILL 2018

SERIAL NO. 63

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

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

The purpose of this Bill is to support implementation of Government's environmental regulatory reform commitments by improving the governance of the NT EPA, providing greater flexibility in the membership of the NT EPA, and providing the NT EPA with new responsibilities to undertake systemic reviews of the environmental management system.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Northern Territory Environment Protection Authority Amendment Act 2018*.

Clause 2. Commencement

This clause provides for the commencement of the Bill. The Bill will commence after the day on which the Administrator gives assent to the Act.

Clause 3. Act amended

This is a formal clause that identifies that the *Northern Territory Environment Protection Authority Act* is amended by this Bill.

Clause 4. Section 3 amended (Definitions)

This clause introduces a new definition of 'statement of intent'. The statement of intent is a new governance measure that is introduced in the new Part 2A of the Bill.

Clause 5. Section 8 amended (Functions and powers)

This clause amends the functions and powers of the NT EPA.

Currently under section 8(1)(c) the NT EPA can only be conferred powers and functions by another Act. This amendment will enable the NT EPA to be conferred powers under Regulations, even if it does not have powers under the associated parent Act.

The amendment to section 8(3)(b) addresses concerns that the NT EPA cannot always provide certainty to businesses as the future is unpredictable (standards change, technology changes, new information emerges, business needs change) and that the NT EPA needs to take account of these changes in a measured predictable way.

This clause also deletes the existing section 8(4). This section is no longer required with the changes to Part 3 of the Act.

Clause 6. Section 10 amended (Membership)

This clause provides that the NT EPA comprises between 4 and 7 members. It provides greater flexibility in the appointments of members and enables the Administrator to appoint additional members where there are suitable candidates and not appoint members where recruitment rounds do not identify any suitable candidates; providing the minimum number of appointees is maintained. This will better position the NT EPA to respond to emerging industries in the future.

Clause 7. Section 13 amended (Leave of absence)

This clause introduces a limitation on the NT EPA's powers to grant a leave of absence to a member by providing that the NT EPA cannot grant leave exceeding a period of 12 months.

This clause addresses a gap in the existing legislation under which the NT EPA could provide a leave of absence for any period. It supports a new power for the Minister to appoint acting members where a member of the NT EPA will be absent for a period and new termination powers of the Administrator.

Clause 8. Section 13A inserted

This clause introduces a new power for the Minister to appoint acting members where a member of the NT EPA will be absent for a period; for example due to illness, vacations or other temporary absences. This power improves flexibility and will ensure that the NT EPA continues to have access to the required breadth of skills and expertise to perform its powers and functions.

Under this clause, the Minister may only appoint a person who demonstrates similar knowledge, skills and experience to the member that is being temporarily replaced. These

appointments cannot exceed a total period of 12 months. Temporary appointees will be eligible for appointment to the NT EPA as members should a permanent vacancy arise.

Clause 9. Section 15 amended (Termination of appointment)

This clause introduces a new ground on which a members' appointment may be terminated if the member is, or will be, absent for a consecutive period exceeding 12 months.

Clause 10. Part 2A inserted

This clause introduces new Part 2A. Part 2A is designed to improve the governance of the NT EPA by requiring it to prepare a 'statement of intent'. The clause specifies the matters that must be included within the statement, including information on the NT EPA's priorities for the period covered by the statement and how these priorities relate to the objectives of the NT EPA and how they contribute to Territory's environmental management and economic development objectives. The statement must be prepared not less than every two years. The NT EPA may prepare a new statement at any time.

The Minister must accept the statement provided that it does not articulate activities that are inconsistent with the NT EPA's objectives. If the Minister considers that the statement is inconsistent with the NT EPA's objectives, the Minister would advise the NT EPA of that view and the NT EPA and the Minister would work cooperatively to identify amendments to the proposed statement.

The statement must be published and the NT EPA must have regard to the statement when exercising its powers and performing its functions. The statement is not intended to limit the NT EPA's performance of its powers or functions and failure of the NT EPA to deliver all of the identified activities in a statement of intent does not provide any grounds for termination of the NT EPA's members. This is in recognition that priorities may change in response to factual circumstances and the objective of the statement is to improve understanding of the NT EPA's activities but not to direct the NT EPA in those activities.

The NT EPA is required to report on its fulfilment of the activities under the statement annually in its annual report.

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

This clause introduces and articulates principles of ecologically sustainable development into the Act.

Clause 12. Section 26 amended (Consultation and matters for consideration)

This clause amends the matters that the NT EPA may consider in performing its advisory functions contained in Part 3 of the Act.

The amendments reflect the adoption of principles of ecologically sustainable development at new section 25AA.

An amendment to section 26(f) requires the NT EPA to consider the breadth of Government's policies and priorities and not just its economic policies when providing advice

or reports under this Part. This amendment supports the NT EPA's obligation to consider Government's environmental management and economic development objectives as part of preparing its statement of intent.

Clause 13. Section 27 repealed (Response to advice)

This clause repeals section 27 of the Act which currently requires the Minister to only respond to advice provided by the NT EPA. It is replaced by new section 29A.

Clause 14. Section 28 amended (Environmental quality reports)

This amendment clarifies that the Minister must provide a response to an environmental quality report prepared by the NT EPA. It introduces consistency between the Minister's obligations in relation to environmental quality reports and the other types of advisory material prepared by the NT EPA under this Division.

Clause 15 Section 28A inserted

This clause introduces a new power for the NT EPA to provide environmental management reports. These reports are designed to give the NT EPA the power to provide holistic advice about the functioning of the Territory's system of environmental management.

These new powers reflect the NT EPA's new 'assurance monitor' role which purpose is to build community trust by undertaking periodic reviews of the environmental management system and its elements, and recommending system improvements to deliver better environmental outcomes.

The NT EPA will be able to identify a matter to be reviewed at its initiative or may be requested by the Minister to undertake a review.

Clause 16. Section 29 amended (Availability of advice and reports)

This is a minor technical amendment associated with the restructuring of Part 3 of the Act.

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

This clause replaces existing clause 27 and provides that the Minister must prepare a response to any advice or report prepared by NT EPA under Part 3 of the Act. The clause identifies that the NT EPA may publicise the response in the way that it considers appropriate.

As part of restructuring Part 3, the clause introduces a new Division 2 and a new heading for Division 3.

The new Division 2 into Part 3 of the Act allows the NT EPA to respond to a request for advice about specific proposals, plans, programs or other measures aimed at protecting the environment that might be made by a minister. Under this division, the NT EPA must provide the requested advice and must consider any matters raised by the minister as part of the

request. To maintain the NT EPA's independence, the NT EPA may also consider and advise on other matters that it considers relevant to the request.

For example, a minister could seek the NT EPA's advice on a person's proposal to manage the environmental impacts of their project before granting a project approval. As part of the request, the minister could ask the NT EPA to consider certain matters that might be identified in the legislation establishing the approval regime.

Clause 18. Sections 31 and 32 replaced

This clause repeals and replaces the existing offences in the Act. These amendments clarify the elements of the offences and modernises the Act consistent with current drafting practices.

Clause 19. Section 33 amended

This clause introduces the NT EPA's obligation to report on its fulfilment of the activities under a statement of intent in its annual report.

Clause 20. Part 7 inserted

This clause inserts a new Part 7 into the Act to provide for transitional arrangements. It commences when the Amendment Act commences.

Under the transitional arrangements, the changes identified at clause 10 will not have any effect on advices and reports currently being prepared by the NT EPA where those advices or reports were requested by the Minister before the Amendment Act commences.

The clause also provides that if an offence was committed under sections 31 or 32 of the Act before the Amendment Act commences, then those sections continue to apply in their original form to those offences. An offence is taken to have been committed before the commencement of the Amendment Act if the conduct occurred before the amendments commenced.

Clause 21. Repeal of Act

This is a formal clause that identifies that the Act is repealed the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book once all the amendments have commenced.