ENVIRONMENTAL DEFENDERS OFFICE NT

2/98 Woods Street, Darwin NT
GPO Box 4289 Darwin NT 0801
Tel: (08) 8981 5883
edont@edont.org.au
www.edont.org.au

11 June 2019

Social Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
Parliament House
Darwin NT 0800

By email: SPSC@nt.gov.au

Dear Chair and Committee Members

Submission on Environment Protection Bill

The Environmental Defenders Office (NT) Inc (**EDONT**) welcomes the opportunity to make a submission on the Environment Protection Bill 2019 (**Bill**).

EDONT is a community legal centre specialising in public interest environmental law. We regularly advise clients in relation to the current *Environmental Assessment Act* (**EA Act**) and on the full range of other Northern Territory and Commonwealth environment and natural resource management laws.

1. Introduction

In our experience, the protections currently offered by the Territory's environmental laws are highly inadequate. This is most acutely revealed by the failures of the environmental impact assessment (**EIA**) framework in the EA Act.

EDONT considers that the EA Act has completely failed to act as an adequate safeguard against serious environmental, social and cultural impacts of development and major projects in the Northern Territory. The legislation, which hasn't been amended in any meaningful way since it was introduced in 1982, fails to meet modern environmental regulatory standards and community expectations. In our view, the current legislation fails for a range of reasons, but primarily due to:

- excessively high discretion and very limited levels of prescription (leading to inconsistent application and unaccountable and unenforceable decision-making);
- limited opportunities for public participation;
- minimal accountability and transparency checks and balances; and
- an absence of compliance and enforcement powers, reflecting the lack of any substantive power held by the NT Environment Protection Authority (**NTEPA**) or Environment Minister in the EIA process.

These failures have frequently led to extremely poor environmental outcomes for the community. We consider a complete overhaul of the legislation is required.

EDONT is pleased that the Bill has been introduced. We consider the Bill a significant improvement on the EA Act. If properly implemented, the new legislation should lead to greater protection of the environment and improved outcomes for the community.

We note that the Bill has (together with draft Regulations) already gone through a public consultation process (**Exhibition Bill**). While there are some elements of the Bill that have been significantly clarified and improved since the Exhibition Bill, we are concerned to see that there have been some significant amendments that have weakened the environmental protections offered by the Bill, including by reducing accountability, transparency and access to justice provisions.

In our view, there are provisions in the Bill that have the risk of significantly undermining the new legislative framework, including by carrying over some weaknesses from the current EIA framework and/ or by placing too great an emphasis on process industry demands for certainty, undermining the original intent of these reforms.

This new legislation is an opportunity to transform the NT's environmental laws to better reflect how valued the natural environment is to all Territorians. It should first and foremost be about ensuring the EIA framework is established as something that prevents damage and protects the environment for current and future generations of Territorians, rather than focusing primarily on carrying over the existing EIA framework in a way that focuses only on providing greater certainty to industry (at the expense of accountable decision-making focused on the protection of the environment).

With high-impact industries and major development on the horizon (e.g. fracking, mining, dams and agricultural intensification), the Territory cannot afford to implement another EIA system that is filled with gaps and weaknesses. The outcomes are potentially devastating for communities across the Northern Territory.

Therefore, while EDONT broadly supports the Bill and considers on the whole that it should be passed, we consider that it must first be amended, as identified in this submission.

In this submission, we outline:

- key positives in the Bill (which must be retained, subject to some minor amendments);
- key areas of concern in the Bill;
- proposed detailed amendments that address drafting gaps and weaknesses that we consider are likely to have a significant impact in practice.

2. Key positives

EDONT strongly supports that, for the first time, an environmental approval will be issued by the Environment Minister, following an EIA process managed by the NTEPA, for *all* development that potentially has a significant impact on the environment.

A standalone environmental approval is a significant step towards transforming environmental protection in the Northern Territory and breaking down the inherent conflicts of interest that are at the core of the current approach (whereby sector Ministers are responsible for approving the environmental impacts for activities they are responsible for promoting). This approval is at the core of the reforms and must be retained.

The following elements of the Bill are also particularly supported, the majority of which do not exist in current legislation:

- An objects clause (Bill cl 3) that is framed around protecting the environment, promoting ecologically sustainable development (**ESD**), and recognising the role and interests of Aboriginal people and community public participation in decision-making.
- The introduction of new 'environment protection declarations' (Bill Part 3) to enable important environmental areas to be protected, and to prohibit classes or types of actions that damage the environment. These are important new powers that could be used to achieve strong environmental outcomes, for example by protecting sensitive natural areas, or prohibiting certain types of damaging technologies from being used across the Territory[1]. They also have

[1] Although we are pleased to see amendments to these provisions from the Exhibition Bill to require that any declarations are necessary to further the objects of the Act (i.e. to provide some accountability and guidance for decision making), we do have some concerns about public consultation processes being removed since the Exhibition Draft. We also consider that there remains an excessive amount of discretion afforded to the relevant decision-makers in exercising some of these powers - the Regulations should enable criteria to be established to better guide these decisions.

the benefit of providing upfront indications to proponents about what is and is not acceptable, delivering a more efficient, strategic framework.

- The requirement that any action with the potential to have a "significant impact" on the environment requires environmental impact assessment (and approval), which is a well-accepted threshold test (including in Commonwealth legislation).[2]
- Broad powers to impose conditions on environmental approvals, including for offsets and financial requirements (Bill Part 5, Division 6).
- The inclusion of the environmental decision-making hierarchy, which adopts the international 'best practice' approach of requiring the impacts of development on the environment to be avoided, mitigated and finally, offset (Bill cl 23), which should bring greater rigour to the EIA process.
- The inclusion of explicit provisions enabling the NTEPA to recommend that an action will have an 'unacceptable impact' on the environment to the Environment Minister, and for the Minister to refuse to grant an approval on that basis (Bill Part 5, Division 4).
- The inclusion of an explicit test, supported by mandatory matters for consideration, that the Environment Minister must apply when determining whether or not to grant an approval (Bill cl 73).
- The inclusion of requirements to publish reasons for certain key decisions (Bill cl 82, 105), as well as requirements to publish certain key information on a public register (Bill cl 284).
- New financial provisions that will enable the Territory to ensure that those responsible for environmental damage can be appropriately held to be liable for the costs associated with remediation (Bill Part 7).
- A comprehensive suite of compliance and enforcement powers and tools to ensure the legislation can be properly enforced, including civil enforcement (Bill Parts 8-11). For example, the Bill provides important investigation powers, and new tools such as environment protection notices, stop work notices and closure notices. These provisions overcome the current absence of any enforcement powers for the Environment Department in relation to EIA under the current EA Act, which is one of its primary weaknesses.

In combination, these elements will bring improvements in accountability, rigour and transparency to the EIA process, particularly when contrasted with the current EA Act. We strongly submit that they must be retained in the Bill.

3. Key concerns

In this section, we identify some key concerns that cut across the Bill.

a. Failure to integrate climate change considerations

EDONT is highly concerned that the Bill, which will be the cornerstone of environmental law for the Northern Territory, fails to mention climate change. Given the level of threat posed by climate change (as spelt out by the Intergovernmental Panel on Climate Change[3]), this is highly concerning. Noting that legislation can have an approximate 'life span' of 20 years, it is crucial that the Northern Territory ensures that its core legal framework for environmental protection is modern and forward looking and can respond appropriately to the challenges of the future.

Other jurisdictions are moving to include references to climate change, particularly in objects clauses, in recognition of the need to establish clear obligations on decision-makers to consider

[2] Subject to the definition of 'significant impact' being amended to remove the word 'major,' discussed further below.
[3] See https://www.ipcc.ch/sr15/

greenhouse gas emissions, and plan for climate change impacts when assessing and approving the environmental impacts of development.[4]

Clear, mandatory and enforceable requirements in legislation are required to ensure there is explicit accountability around the requirements for decision-makers to fully integrate climate change into their decision-making. Regardless of national policy directions, climate change is a critical issue for the Northern Territory, and the law must ensure that it is properly considered in all elements of government decision-making, including EIA. The omission of climate change from the Bill also appears contrary to the government's intentions for developing a climate change offsets framework (which we assume would be intended to be made under Part 6 of the Bill).

Given the above, we submit that the Bill must contain a specific object relating to climate change and must integrate climate change into key operational provisions across the Bill. This will ensure the EIA system is effective to support development that reduces greenhouse gas emissions and is focused on effectively adapting to climate change impacts.

We have proposed various amendments in **Attachment A** that we consider are necessary to effectively integrate climate change into the Bill.

b. Inconsistencies with key Fracking Inquiry recommendations

The *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory* (**Fracking Inquiry**) made a range of recommendations relating to regulatory reform in the context of the petroleum sector, acknowledging the variety of weaknesses that exist in the laws governing the environmental regulation of industry in the Northern Territory (including the EA Act).

While the Bill is consistent with some of the Fracking Inquiry's recommendations (such as the inclusion of a 'fit and proper person' test, and the inclusion of a requirement that decision-makers apply the principles of ESD), it is inconsistent with many others, which seriously undermines both the Bill itself, as well as the proper implementation of the Fracking Inquiry recommendations.

EDONT submits that the following Fracking Inquiry recommendations must be properly implemented in the Bill:

- Unrestricted open standing rights for judicial review (recommendation 14.23) – the Bill only provides for a limited form of extended standing, which is based on an artificial identification of those who have made a 'genuine and valid submission' under an EIA process. This is discussed further below in section 4 of this submission.
- Third party merits appeal rights (recommendation 14.24) – the Bill does not include any third party appeals to NTCAT on the merits of decisions. This is also contrary to a prior election commitment from the government to include such rights. This issue is also discussed further below in section 4 of this submission.
- Civil enforcement proceedings for third parties (recommendation 14.31) – the Bill only enables 'affected' persons to bring civil enforcement proceedings (such as to obtain an injunction). It has removed the original extended standing for 'eligible applicants' (including environmental and community organisations) as proposed in the Exhibition Bill and has limited the timeframe available to bring civil enforcement proceedings (from 3 years as originally proposed in the Exhibition Bill to 3 months).
- Requirement to consider cumulative impacts in decision-making (recommendations 14.19 and 14.21) – although the Bill defines 'impact' to include cumulative impacts, it does not include

[4]For example, see s 3 of Qld's *Planning Act* which includes "accounting for potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development" ; s 1.3 of NSW's *Biodiversity Conservation Act*, which includes "to support biodiversity conservation in the context of a changing climate". Other jurisdictions are also adopting standalone climate change legislation (for example ACT and Victoria).

explicit requirements to consider cumulative impacts when making key decisions which is important to guide decision-making.

- Inclusion of public interest costs rules (recommendation 14.25) – the Bill only provides for the potential to seek a public interest costs order in relation to civil enforcement proceedings (which are limited in their availability), rather than other proceedings under the Bill, including judicial review proceedings.
- Chain of responsibility provisions (recommendation 14.3) – there are no chain of liability provisions, which would have the effect of ensuring 'related parties' to approval holders or those responsible for environmental harm (e.g. parent companies) can be held to be financially liable.

EDONT submits that it is essential for the Bill to be amended to fully implement each of these recommendations. This will ensure the Bill is consistent and fully integrated with other related legislation in the Northern Territory, including for major industries such as the petroleum and fracking industry.

Perverse and inequitable outcomes will be generated if there are different accountability standards applied to different sectors, despite both being aimed at protecting and managing environmental impacts. For example, if open standing for judicial review is not included in the Bill, there will be stronger accountability mechanisms available for lower impact approvals for fracking (e.g. exploration activities) under the *Petroleum (Environment) Regulations* (as open standing has now been included in the *Petroleum Act*) than for higher impact EIA and environment approval processes for more significant fracking activities (e.g. production scale) under the Bill. This would be a highly perverse outcome.

c. Weak accountability and public participation provisions

Although we acknowledge the Bill contains some improvements to deliver accountable and transparent decision-making, including by its increased focus on the importance of public involvement in the objects clause, we have concerns that there has been weakening of various provisions (compared to the Exhibition Bill) and that key issues have not been adequately resolved.

For example:

- A range of important procedural rights are not included in the Bill but are relegated to the Regulations. This includes public consultation/comment procedures around the EIA process, and the detailed requirements for transparency of key documents under the EIA system. Given the process of developing Regulations is not subject to public scrutiny, we consider this to be a serious weakness with the Bill.
- Inappropriate provisions that grant proponents the right to be consulted at key steps in the decision-making process create significant risks for undue influence and corruption in decision-making. These highly unorthodox provisions must be removed from the Bill.
- Access to justice provisions (specifically, third party appeal rights for judicial review, merits review and civil proceedings) have been weakened or completely removed.
- While we are pleased to see a much greater recognition of the rights and interests of Aboriginal people in the Bill as compared with the Exhibition Bill, the legislation still remains contrary to international best practice by not implementing a requirement for 'free, prior and informed consent'.
- Public consultation requirements in relation to declarations of protected environmental areas and prohibited actions have been removed from the Exhibition Bill.

Taken together, we consider the above matters indicate there has been a weakening of the commitment to accountability and transparency. Where possible, we have identified amendments to resolve these issues in section 4 below.

4. Proposed Bill amendments

We now provide more detailed comments on the Bill, focusing on relevant provisions that we consider must be amended prior to passing the Bill. In particular, we have identified amendments that we consider:

- are essential to overcome our key concerns;
- will ensure that the Bill reflects a robust regulatory framework that is first and foremost aimed at protecting the environment;
- will rectify drafting issues that could, particularly on a cumulative basis, significantly weaken the Bill.

Where explicit amendments are proposed, we have included these in the table at **Attachment A** to this submission, where feasible.

a. Introduction (Part 1)

Objects clause

For the reasons described in section 3 above, we strongly submit that climate change must be integrated into the objects of the Bill.

In addition, although we strongly support the recognition of the role of Aboriginal people and the importance of their participation in decision-making processes (and for broad community involvement) in the objects clause, which has been introduced since the Exhibition Bill, we are concerned that new limitations have been placed on the entire legislative framework by including a reference in each of the objects to "the environment of the Territory" (Bill cl 3(a), (b), (c)).

While of course the legislation will regulate *actions* that take place in the Territory, the Bill should not be limited to considering the *impacts* that occur only within the boundaries of the Territory. It is unusual to specifically limit the objects of environmental legislation to be jurisdictionally focused. This drafting could potentially undermine the appropriate scope of EIA under the Bill. It ignores the interdependent and transboundary nature of many ecological and environmental processes and issues, including pollution and greenhouse gas emissions, water and ecology.

Further, the Bill actually anticipates that there may be cooperative agreements between jurisdictions (Bill cl 45) for carrying out EIA. It would be perverse for the Bill to direct the Northern Territory EIA process to only consider impacts on the Northern Territory's environment arising from a project on the border of South Australia or Western Australia, particularly when that project is assessed under a cooperative agreement with the other state.

To resolve these issues, we submit the objects clause must be amended, as set out in **Attachment A**.

Key definitions

We are concerned that the definition of 'environment' (Bill cl 6) has been drafted too broadly, particularly by the inclusion of 'economy'. While EIA processes necessarily involve consideration of a range of social and economic aspects in how they relate to environmental concerns, in our view the proposed definition is so broad as to expand the scope of EIA, and potentially create difficulties in the administration of the legislation consistent with its intended purpose (i.e. the protection of the environment). We suggest a more appropriate avenue would be to adopt a definition similar to that contained in the Commonwealth legislation.[5]

[5] *Environment Protection and Biodiversity Conservation Act* (Cth), Section 528. *Environment includes:*
(a) ecosystems and their constituent parts, including people and communities and
(b) natural and physical resources; and
(c) the qualities and characteristics of locations, places and areas; and
(d) heritage values of places; and
(e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d)

We are also highly concerned with how 'significant impact' is defined (Bill cl 9,11) - that is, that an impact must be 'of major consequence'. The definition of significant impact is key to how the legislation will operate, by guiding which actions will require EIA and approval. The language must be set to ensure that the threshold of impact is not unreasonably high, such that significant environmental impacts are determined to not be captured by the legislation.

This definition is also inconsistent with the language used by the Commonwealth under the *Environment Protection Biodiversity Conservation Act 1999* (**EPBC Act**) for interpreting the test of 'significant impact' under Commonwealth EIA:

> *A 'significant impact' is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts…*[6]

If the Bill is intended to be accredited for assessment under the EPBC Act (which we understand to be the Department's intent, and that this has been a substantial influence on the Bill's drafting), we strongly recommended that the Bill be consistent with those of the Commonwealth.

We therefore suggest the word 'major' must be deleted from clauses 9 and 11.

We also query the use of assigning a monetary figure for the amount of money to determine whether something has a 'significant impact' (cl 9). It is an artificial approach that does not translate appropriately in a useful way, when applying a threshold test of 'significance' – prior to any action being undertaken. For example, how can the level of impact on the disturbance of critical habitat that puts a bird at risk of extinction, be translated into a monetary figure intended to estimate the cost to 'remediate'? We consider clause (9(b)) should be deleted.

We otherwise support the language in these definitions, including the inclusion of cumulative impacts in the definition of 'impact' (cl 10).

b. Principles of environment protection and management (Part 2)

Principles of ESD

We strongly support the inclusion of principles of ESD in the Bill, and the inclusion of the requirement for decision-makers to 'consider and apply' the principles of ESD (Bill cl 17), noting this is also consistent with recommendation 14.11 of the Fracking Inquiry.[7] However, accountability around this requirement is seriously undermined by the explicit requirement that a decision-maker is not required to specify *how* they have considered or applied these principles (Bill cl 17(3)). We submit that cl 17(3) must be deleted, in order to genuinely deliver accountable decision-making and implementation of the intent of the Fracking Inquiry.

Further, while we also support the decision-making principle in clause 18, we consider the language must be mandatory to genuinely give effect to commitments to properly integrate public participation in decision-making through the implementation of the EIA framework. Given, as we understand it, the majority of procedural rights for the community in relation to decision-making is proposed for inclusion in the Regulations, it is essential that the Act, at a minimum, provides a clear and mandatory obligation for community involvement and participation. We therefore submit that the word 'should' be replaced with 'must' in cl 18(2).

With respect to the principles themselves (cl 18-24), we generally support these as they adopt long-standing and well accepted principles that are consistently applied in jurisdictions around Australia. However, it is not clear why the principle of conservation of biological diversity and

[6] Matters of National Environmental Significance – Significant Impact Guidelines: https://www.environment.gov.au/system/files/resources/42f84df4-720b-4dcf-b262-48679a3aba58/files/nes-guidelines_1.pdf

[7] https://frackinginquiry.nt.gov.au/inquiry-reports?a=494300 at p 402

ecological integrity in particular has been amended from its ordinary drafting[8]. We consider this definition should be better and properly aligned with the EPBC Act (s 3A), by providing that conservation of biological diversity and ecological integrity also "should be a fundamental consideration in decision-making".

Hierarchies

While we strongly support the environmental decision-making hierarchy, we consider it essential that this be a mandatory standard that must be applied by proponents in designing actions, and by decision-makers in assessing and determining applications for environmental approvals. The approach set by the hierarchy (avoid, mitigate and then offset impacts of development) is at the heart of the EIA process. Its mandatory application (applied consistently to all proponents and for all decisions made under the legislation) is essential to ensure a robust framework that is based on international best practice principles.

We therefore submit that the word 'should' be replaced with 'must' in clause 26. This would also be consistent with the requirement under clause 73 that the Minister be satisfied that the significant impacts of the action have been appropriately avoided, mitigated or offset.

We have proposed amendments in **Attachment A** to implement the changes suggested above.

c. Environment protection declarations (Part 3)

As noted in section 2, we support the various 'declarations' provided for in Part 3. However, we are concerned about the changes that have taken place since consultation on the draft Bill. Specifically, we object to the following changes that were made to the Exhibition Bill:

- The complete removal of environment protection policies and the general environmental duty from the Bill. Although we understand it is intended that these will be be reintroduced during the second stage of the environmental regulatory reforms, in our view there is no sound reason for removing these provisions which give key powers and obligations to protect the environment. These provisions should be re-inserted into the Bill.
- The removal of public consultation provisions for all types of declarations under this Part – this is a serious winding back of a commitment to public participation in establishing key protections, which was provided for in the Exhibition Bill. These should be re-inserted into the Bill.
- The transfer of decision-making power for making permanent declarations of protected environmental areas and prohibited actions from the Environment Minister to the Administrator (Bill Part 3, Division 2). It is completely inappropriate to assign executive decision-making power in this context to the Administrator, which is a public office that plays a procedural role in law making and is not accountable to Parliament or the community. These obligations must rest with the Minister, for accountability. Clauses 36, 38 and 39 must be amended accordingly (see **Attachment A**).

d. Environmental impact assessment and environmental approvals (Parts 4 and 5)

Core operational provisions (Parts 4 and 5)

Part 4 contains key provisions related to the operation of the EIA framework. Although the drafting has improved when compared to the Exhibition Bill, we have some concerns that it still lacks some cohesion, and that there are a number of gaps and inadequacies.

While we support the intent behind clause 43 ('general duty of proponents'), and particularly applaud the inclusion of explicit recognition of culturally appropriate consultation with Aboriginal communities and documenting community knowledge and understanding of natural and cultural values, we consider this clause (together with clause 73) must be revised as follows:

[8] Section 3A, EPBC Act provides (amongst other things) that "The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making".

- First, explicit acknowledgement of climate change (as previously noted) and cumulative impacts is required, and proponents must be given a clear direction to apply the environmental decision-making hierarchy through the design of their action. The requirement for community consultation should also specify that such consultation must be 'adequate and appropriate'.
- Second, we consider that there must be an obligation on proponents to demonstrate in any EIA process how they are in compliance with each of their duties. This obligation must be translated, or 'carried over' to the decision-making power of the Minister (cl 73), i.e. the Minister must only grant an approval if satisfied that the proponent has demonstrated compliance with each of the duties articulated in clause 43.

Our suggested drafting to amend clauses 43 and 73 to ensure the above matters are mandatory and enforceable is reflected in **Attachment A**.

We also note there appear to be some gaps in how the provisions requiring EIA (particularly cl 55, 57) interact with Part 5 (environmental approvals). There does not appear to be any direct link in the Bill that connects the requirement to conduct EIA with a subsequent mandatory requirement for an environmental approval. Further, it appears that there is no clear offence for:

- failing to refer an action that has the potential for a significant impact on the environment, or
- carrying out an action that has the potential to have a significant impact on the environment without an approval in place[9].

These are critical gaps that could significantly undermine the enforcement of the legislation. An appropriate offence provision was originally included in the Exhibition Bill (cl 48) but appears to have been removed, which is highly concerning.

The Bill must therefore be amended to specify that:

- it is an offence to carry out an action that has the potential for a significant impact on the environment without referring that matter to the NTEPA; and
- if the NTEPA determines that an action or strategic proposal has the potential for a significant impact on the environment, the NTEPA must carry out an EIA of the action/proposal; and
- where an EIA is required, the proponent must obtain an environmental approval; and
- it is an offence to carry out the action(s) in the absence of an approval.

Without these offence provisions in place, the entire EIA framework is undermined.

Clause 34 must be amended so that an offence applies for failure to refer to the NTEPA that is not limited to the existence of referral triggers alone, and a new clause 61A should be incorporated into the Bill to make the clear link between EIA and the requirement for an approval (see **Attachment A**).

Fit and proper person test (part 5)

We strongly support the inclusion of a 'fit and proper person' test in the Bill, given how fundamental this is for ensuring proponents are suitable to hold approvals for complex operations (particularly in the historical context of the Northern Territory).

However, we consider the drafting of this test must be strengthened. We submit that clause 62 should specify that the Minister *must* have regard to the various listed matters, and that more detailed mandatory matters be included in the Bill (not in the Regulations, which are not subject to the same levels of scrutiny). We suggest the Bill adopt the language used in s 15A of the

[9] We have only identified offences for failing to refer an action where a referral trigger is in place (cl 34) (and not where there is the potential for a significant impact on the environment) and contravening the conditions of an approval (Bill cl 89).

Petroleum Act (as recently amended to implement a recommendation of the Fracking Inquiry) to ensure a comprehensive fit and proper person test is included in the Bill.

Further, the Bill must specify that a proponent is responsible for disclosing relevant information to the Minister, and that it is an offence if information is withheld. This ensures that the onus is on the proponent to provide information, rather than imposing a significant administrative burden on the Department and Minister to identify relevant information.

Ministerial decision-making (part 5)

EDONT submits that the Bill requires more explicit constraints and guidance around various Ministerial decision-making powers. In our view, the Bill:

- does not always appropriately guide or constrain the discretion of the Minister as the final decision-maker, at key points;
- provides excessive concessions for and rights to proponents to inappropriately influence the decision-making process, contrary to principles of transparent and accountable decision-making, and contrary to the public interest.

We suggest the following clauses must be amended, as they risk undermining the rigour of the EIA framework as a whole:

- **Clauses 70(1)(a)(ii), 72, 78 and 80(2)(a)(ii)** – these provisions, which give proponents a rights of consultation (including a 'show cause' process) at key points in the approval processes establishes openings for undue influence, or even corruption. In our view, these provisions are highly unorthodox and provide a completely inappropriate opportunity for the proponent to influence the final decision of the Minister, amounting to establishing a legislated process for industry lobbying. Decision-making must be based on the objective advice of the NTEPA, and on the appraisal of the proposal in accordance with the requirements of the law. It must be at 'arm's length' from the proponent once they have made their application for an environmental approval. These provisions must therefore be deleted from the Bill.
- **Clauses 73 and 76** - while we largely support the approach adopted by this clause, we consider that further matters should be specifically referenced to more coherently link the Minister's decision-making to the core concepts of the EIA framework. As noted above, the Minister must be required to be satisfied that a proponent has complied with its duties (cl 43, which should also explicitly include requirements to consider climate change and cumulative impacts), that the community has been appropriately and adequately consulted, and that the Minster is satisfied that the proponent is a fit and proper person. These clauses should also be drafted consistently (i.e. clause 76 should more closely replicate clause 73).
- **Clause 74** – this clause provides that the Minister must make a decision on an environmental approval in 30 business days. However, the ability for the Minister to extend this timeframe, if necessary in the circumstances, has been removed from the Bill (compared to the Exhibition Bill). We consider the Minister must retain discretion to extend the decision-making timeframe, particularly for major projects that have a high impact and for which there is considerable complex information, and thus where careful decision-making is required.
- **Clause 106** – this clause enables the Minister to amend an environmental approval, including at the request of the approval holder. This clause needs more substantive constraints on when and how the Minister may decide to amend an approval. At a minimum, the clause should specify that the Minister must be satisfied that it will not result in any detriment to the environment and must be consistent with the objects of the Act.

Strategic proposals and assessments (Part 5 Division 8)

EDONT is concerned about the vague nature of the provisions guiding strategic proposals, and in particular the process for obtaining an approval notice. We consider many of the provisions are

much less rigorous than those for seeking an environmental approval under a standard assessment process.

We are concerned that strategic assessment processes could be used to avoid detailed scrutiny and rigour of an ordinary assessment and approval process. To help overcome this risk, we submit that clause 101, which sets out the matters for consideration by the Minister in determining whether to approve or refuse an approval notice for an action that has been subject to strategic assessment, should be amended so that the Minister must be satisfied that:

- the action is consistent with the scope and conditions of the environmental approval given after the strategic assessment;
- the community has been appropriately and adequately consulted about the specific nature of the action sought to be carried out under the approval notice; and
- the granting of the approval notice is consistent with the objects of the Act.

There also needs to be a power for the Minister to apply conditions to an approval notice, to meet the particulars of the activities proposed to be carried out in accordance with a strategic assessment. This could be achieved by inserting a new clause that adopts the provisions of Part 5, Division 6 (conditions of environmental approval) to approval notices. Our suggested amendments are included in **Attachment A**.

e. Environmental offsets (Part 6)

Although we generally support the provisions guiding offsets in the Bill, on the basis that the environmental decision-making hierarchy should be applied on a mandatory basis by proponents, we have the following concerns:

- As previously noted, it is surprising that there is no explicit mention of climate change, given offsetting is ordinarily carried out with respect either to greenhouse gas emissions (and biodiversity). This must be clarified, to ensure there is clear scope for the government to implement a climate change offsetting framework under the Bill.
- There is very limited guidance or constraints placed on the outcomes an offsetting framework needs to achieve. In order to strengthen these provisions, we submit that clause 125 be amended to specify that the Minister must be satisfied that any guidelines promote the objects of the Act.

Suggested drafting in relation to offsetting is included in **Attachment A**.

f. Financial provisions (Part 7)

We are disappointed that provisions for financial assurances have been removed from the Bill (compared to the Exhibition Bill) and call for the government to commit to implementing these provisions in the next stage of the environmental regulatory reform program. We otherwise broadly support the financial provisions in the Bill.

These provisions operationalise the 'polluter pays' principles, providing the Northern Territory Government with much needed powers to better ensure that the liability associated with un-remediated or contaminated sites does not fall on the wider community (as taxpayers). The need for more robust provisions of this nature is illustrated by the huge liabilities and risks associated with legacy mine sites across the Northern Territory (such as Redbank and Rum Jungle), as well as critical environmental issues associated with current operations such as the McArthur River Mine.

We particularly support the provisions for bonds, including the powers to enable these to be amended and updated to respond to changing circumstances. Recent cases highlighting issues associated with security bond provisions underscore how critical these provisions are, and the risks faced by Territorians in the absence of appropriate bonds.[10]

[10] See for example, *Territory Iron Pty Ltd v Minister for Mines and Energy* [2019] NTSC 28

g. Audits and enforcement (Parts 8 and 9)

EDONT supports the provision for audits in Part 8 and consider they will provide an important tool to the Department to protect the environment. We also support the range of enforcement provisions which give offices of the Environment Department appropriate powers to ensure the Bill will be able to be enforced.

In particular, we support the general powers identified in cl 162, the power to give directions under cl 172 and associated offences, and the power to issue environment protection notices (Division 2), stop work notices (Division 3) and closure notices (Division 4). We also support the duty to notify incidents and associated offences (Division 8). These are all standard tools for environmental enforcement and are strongly supported.

h. Civil proceedings (Part 10)

We generally support the provisions for civil proceedings and recognise that there are some important acknowledgements of the public interest in this part. This includes not requiring undertaking for damages for interim injunctions (cl 233), enabling the court to make decisions regarding security, and undertakings for damages and costs orders based on the public interest (cl 238-239).

However, as noted in section 3 above, we have serious concerns that the provisions have been weakened from those in the Exhibition Bill, in a way that significantly undermines their existence in the Bill[11]. We are particularly concerned about cl 230 (which addresses standing for bringing civil proceedings) It contains vague language, which requires that a person is "affected" by an alleged act or omission to bring civil proceedings.

The Exhibition Bill had previously included a range of 'eligible applicants' including members of environment, community, industry groups and land councils. The current language appears to attempt to narrow this standing, although who would be 'affected' is unclear. A best practice approach, that is consistent with the Fracking Inquiry recommendations, would be to include open standing (discussed further in relation to Part 14, below). Clause 230 should be amended so that 'any person may apply to the court for any injunction…' (see **Attachment A**).

i. Offences, penalties and criminal proceedings (Part 11)

EDONT supports this Part. In particular, we support cl 260 (offence of false/misleading information), the various provisions assigning liability to relevant parties including occupiers, and associated corporate entities in Division 1, as well as the principles that are to be applied in imposing penalties (cl 270) and additional court orders available for environmental offences (cl 271). These are all important provisions in ensuring the effectiveness of enforcement provisions and are in line with best practice.

j. Review of decisions (Part 12)

EDONT strongly submits that third-party appeal rights, for both judicial review and merits appeal, must be included in the Bill (as per the government's original intention, and as contained in the Exhibition Bill).

There must be clear appeal rights for any person to challenge:

- the lawfulness of any decision or action under the Bill (through judicial review proceedings in the Supreme Court); and
- the merits of a decision in relation to an environmental approval (through merits appeal rights to NTCAT).

---

http://www.supremecourt.nt.gov.au/decisions/documents/aaaNTSC28Sou1902TerritoryIronPtyLtdvMinisterforMinesandEnergy30April.pdf

[11] We are also concerned that the timeframe for bringing proceedings has been reduced from 3 years to 3 months from the Exhibition Bill.

Third-party appeal rights are critical to the integrity of environmental laws, supporting accountable, evidence-based decision-making and the rule of law. The Fracking Inquiry confirmed this. Without these rights, particularly the inclusion of merits appeal rights for third parties, the draft Bill is 'hollow' in its commitment to the rule of law and accountability.

The oft-cited concerns with respect to delaying development and 'vexatious' litigants for third-party appeal rights simply do not play out in practice. This point was emphasised in the Final Report of the Fracking Inquiry (chapter 14.9) and also has been explored in detail by a recent paper by Justice Pepper[12]. There are mechanisms already in place in the Northern Territory legal system to prevent vexatious litigation.[13]

The absence of both kinds of appeal rights is contrary to the recommendations of the Fracking Inquiry, which specified that it would be appropriate for all decisions to approve fracking production approvals to be subject to these appeal rights[14]. As previously discussed in section 2 of this submission, it is perverse that these kinds of appeal rights would be available for approvals for lower impact activities such as small scale exploration activities (via the approval of environment management plans under the *Petroleum (Environment) Regulations*) but not available for environmental approvals that would be required for higher impact activities (such as full production scale fracking operations).

We also note the failure to include merits review rights is also directly contrary to the government's election commitment in relation to the environmental regulatory reforms, which stated "Decisions made under this new suite of laws will be reviewable/appealable decisions under Northern Territory Civil and Administrative Tribunal (NTCAT)"[15].

With respect to judicial review, although there is a form of 'extended standing' provided for in the Bill, the approach in clause 276, which only entertains extended standing for someone who has made a 'genuine and valid submission' is seriously flawed.

While submissions are an important procedural right, providing that whether or not someone has made a submission as a condition for accessing appeal rights:

- is not a proper indicator of whether someone is genuinely acting in the public interest or has a legitimate interest in the decision-making process under question (or indeed, whether they may be a 'vexatious' litigant);
- potentially excludes those with a genuine public interest, but for an unrelated reason were unable to make a submission on the relevant decision; and
- would exclude access to challenge important decisions for which no submission process is available under the law, which are likely to be absent in relation to important decision points.

Further, this position will simply create confusion with the existing position under common law, which currently does provide standing to parties beyond those directly affected by a decision. While those rights will continue at common law, for the sake of clarity and to avoid unnecessary litigation regarding standing, it is vital that the position on third party appeal rights be reconsidered, and a more thoughtful approach is taken. This position must be based on evidence and on a clear, thorough understanding of the legal implications. It must be based on a more

[12] See also the following paper by Justice Rachel Pepper and Rachael Chick entitled 'Ms Onus and Mr Neal: Agitators in an Age of "Green Lawfare": https://frackinginquiry.nt.gov.au/inquiry-reports?a=496018
[13] See the Supreme Court Rules (Order 23) and the *Vexatious Proceedings Act (NT)*. These measures (such as the ability to strike out proceedings) provide an appropriate safeguard against genuinely vexatious litigants without removing access to justice for those who seek access to Courts and Tribunals in the public interest to uphold the rule of law and ensure accountable, transparent and rigorous decision-making. See also the comprehensive discussion of this issue in the expert report forming part of the submission on the Regulatory Reforms Discussion Paper June 2017 by the Northern and Central Land Councils: https://denr.nt.gov.au/__data/assets/pdf_file/0010/436258/21-Submission.pdf (Attachment p74-76).
[14] See section 14.9 of the Fracking Inquiry's Final Report.
[15] http://territorylabor.com.au/Portals/territorylabor-staging/docs/HealthyEnvironmentStrongEconomy.pdf at p13

balanced perspective that recognises the need to protect the public interest, deliver on commitments to accountability, and ensure the rule of law is able to be upheld.

EDONT considers alternative drafting could establish open standing for judicial review that accommodates various stakeholder concerns, without absolutely denying access to justice for concerned citizens and groups acting in the public interest for the Northern Territory[16]. In **Attachment A**, we propose two alternative clauses to replace cl 276 (with a preference for Option 1 due to its simplicity, commitment to broad access to justice and consistency with best practice).

With respect to merits review (cl 277 and the Schedule), we also propose amendments to the Schedule, in **Attachment A**. We consider decisions under cl 69 (decision about environmental approval) and cl 101 (decision about approval notice – strategic proposal) at a minimum, should be included in the Schedule as decisions that 'any person' has the legal right to appeal to NTCAT.

k. General matters (Part 13)

Although this part contains useful provisions (for example, cl 285 - directions to provide information, which could be used in relation to the fit and proper person test, and cl 290 - a requirement for the CEO of the Department to report on enforcement and compliance), we have some concerns about the following provisions:

- **Clauses 281 and 282** – these provide excessive discretion to withhold important information from publication and are at risk of being over-utilised. The provisions should provide further constraints on when the Minister or NTEPA may withhold information, emphasising that it is in the public interest to have transparency over the EIA process, and so any decision to withhold information must be determined to be in the public interest, having taken into account the objects of the Act.
- **Clause 284** – this provision has been significantly narrowed from the Exhibition Bill, indicating a retreat from transparency. It is essential that the Bill mandate what information is to be kept in a public register (rather than the Regulation). This must include documents such as referrals, EIA documents, environmental approvals and approval notices, audits, and all forms of documents issued in accordance with compliance powers.
- **Clause 288** – this provision enables a proponent or approval holder to apply for an exemption from compliance with a notice to provide information under the Act. There is no constraint placed on when this power may be exercised, which is completely inappropriate given that it could enable exemptions to be sought from a range of matters. We submit that there must, as a minimum, be a requirement for the Minister to consider the public interest and the objects of the Act in making the decision.

l. Transitional provisions (Part 14)

EDONT does not object to the majority of transitional arrangements set out in Part 14. We particularly support that an environmental approval will be required for actions that do not currently require a statutory authorisation (cl 300), and where assessments are completed under the former Act, after commencement of the Bill (cl 301). We also support the legislation that has been identified as a 'prescribed Act' for transitional purposes[17].

However, we would like to see a process included in the Bill whereby actions that have existing statutory authorisations under other legislation (e.g. Authorisation under the *Mining Management Act*) are transitioned across to having an environmental approval. This is very important to ensure that existing operations are subject to the new compliance and enforcement powers of the Environment Department, and to ensure that all industry is subject to equal regulatory regimes

[16] For example, in response to stated industry concerns about foreign/interstate 'vexatious' litigants, third-party merits review could be restricted to individuals, groups and organisations based in the Northern Territory.

[17] In particular, we support that the *Pastoral Land Act* has not been included in this list, because it does not have an adequate assessment and approval process for land clearing on pastoral land.

and standards. This process should be considered as part of the second stage of the environmental regulatory reform program.

We also have concerns with the following clauses:

- **Clause 312** – This deals with consequential amendments to the Mining Management Act and needs to be amended. It is not appropriate that a mine operator has three years to apply for an authorisation or mining management without transitioning to requiring an environmental approval under the new legislation. This period should be reduced. We consider a maximum period of 1 year would be appropriate.
- **Clause 315** – This deals with consequential amendments to the NTEPA Act. It is not clear why this provision proposes repealing the obligation for the NTEPA to consider the principles of ESD in performing its advisory functions. We submit that s25AA(1) of this Act should be retained.

D. Concluding comments

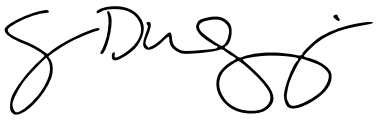
We conclude by emphasising that while we do strongly support the repeal of the EA Act and replacement with the *Environment Protection Act*, there are many opportunities to amend the current drafting of the Bill to ensure a robust environmental regulatory framework is delivered to protect the environment for current and future generations of Territorians. It is critical that time is taken to appropriately resolve current issues and gaps.

Together with the recommendations of the Final Report of the Fracking Inquiry, this Bill is a 'once in a generation' opportunity to bring about genuine transformation to the environmental legal framework for the Northern Territory so that it operates to effectively protect the environment in the public interest for current and future generations.

EDONT submits that the Northern Territory Government must demonstrate its commitment to delivering on these objectives by amending the Bill in the ways proposed by this submission.

Yours sincerely

Environmental Defenders Office (NT) Inc



Gillian Duggin

Principal Lawyer

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
3	• Integrating climate change • Removing potential limitations on considering trans-boundary environmental impacts	**Objects** The objects clause should be amended as follows: *The objects of this Act are:* *(a) to protect the environment ~~of the Territory~~; and* *(b) to promote ecologically sustainable development so that the wellbeing of the people of the Territory, both now and in the future is maintained or improved without adverse impact on the environment of the Territory; and* *(c) to recognise the role of environmental impact assessment and environmental approval in promoting the protection and management of the environment ~~of the Territory~~; and* *(d) to provide for broad community involvement during the process of environmental impact assessment and environmental approval; and* *(e) to recognise the role that Aboriginal people have as stewards of their country as conferred under their traditions and recognised in law, and the importance of participation by Aboriginal people and communities in environmental decision- making processes.* *(f) To support decision-making that accounts for climate change, in particular recognising the need to reduce greenhouse gas emissions and to plan effectively for climate change impacts.*
9, 11	• Setting appropriate thresholds and environmental rigour	Delete the word 'major' from clause 9(a) and 11 Delete clause (9(b))
17	• Strengthening transparency	Delete clause 17(3)

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
	and accountability	
18	• Strengthening accountability and public participation	Replace 'should' with 'must' in clause 18(2)
23	• Strengthening environmental rigour	**Principle of conservation of biological diversity and ecological integrity** This clause should be amended as follows: *Biological diversity and ecological integrity should be conserved and maintained <u>and should be a fundamental consideration in decision-making</u>*
26	• Strengthening environmental rigor and accountability	Replace 'should' with 'must' in clause 26
34	• Strengthening accountability	This clause should be amended to specify that offences apply where an action has the potential to have a significant impact on the environment, and the action is not referred to the NTEPA. The offence should not be limited to circumstances where a referral trigger applies.
36, 38 and 39	• Strengthening accountability	Replace 'Administrator' with 'Minister' in clauses 36, 38 and 39
42	• Integrating climate change	**Purpose of environmental impact assessment process** This clause should be amended as follows: *The purpose of the environmental impact assessment process is to ensure that:* …..

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
		(b) all actions that may have a significant impact on the environment are assessed, planned and carried out taking into account: *……* *(v) the need to reduce greenhouse gas emissions and to plan effectively for climate change impacts, including indirect and cumulative impacts.*
43	• Linking EIA with environmental decision-making hierarchy • Integrating climate change • Integrating cumulative impacts	**General duty of proponents** This clause should be amended as follows: *A proponent of an action has the following general duties under an environmental impact assessment process:* *…….* *(h) to demonstrate how the design has:* *i. applied the environmental decision-making hierarchy to greenhouse gas emissions and their direct and indirect impacts (including cumulative impacts) associated with the action, and* *ii. been planned effectively to respond to climate change impacts, and* *iii. incorporated consideration of, and applied the environmental decision-making hierarchy to, all other cumulative impacts associated with the action*
61A (new)	• Establishing clear requirement for approval and associated offence	A new clause should be inserted under clause 61, as follows: **Requirement for environmental approval** *(1) Where the NTEPA has determined that a referred action or the actions proposed by the referred strategic proposal have the potential to have a significant impact on the environment and that it must carry out environmental impact assessment under Part 5, the proponent must obtain an environmental approval under this Part prior to carrying out that action or actions, or commencing any part of that action or actions.*

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
		(2) It is an offence to carry out any action or actions in contravention of (1) *……(etc)*
62	• Strengthening accountability	This clause should adopt the language of the 'appropriate person' test included in the *Petroleum Act* s15A
66	• Integrating climate change	**Statement of unacceptable impact** This clause should be amended to include the following sub-clause: **…..** *(3) Without limiting (1), an unacceptable environmental impact includes:* *(a) unacceptable impacts from greenhouse gas emissions, including high impact development from which the emissions cannot be offset* *(b) unacceptable risks associated with climate impacts, including where climate change may pose a realistic threat to life and safety, may impose prohibitive public costs by way of emergency management or infrastructure costs, or would pose significant threats to biodiversity.*
73	• Linking matters for consideration with proponent's duties • Integrating climate change (through proponent's duties)	***Matters to be considered by Minster in deciding on environmental approval*** This clause should be amended (to implement the amendment to cl 43 above) as follows: …… *(1) In addition to the matters set out in Part 2, the Minister must have regard to the following in deciding whether to grant or refuse an environmental approval for an action:* *(a) the objects of this Act;* *(b) the assessment report on the action;* *(c) whether the proponent is a fit and proper person to hold an environmental approval;*

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
	• Strengthening fit and proper person test	*(d) any other matters the Minister considers relevant.* *(2) Before granting an approval for an action, the Minister must be satisfied that:* *……* *(a) The community has been appropriately and adequately consulted on the potential environmental impacts and environmental benefits of the proposed action; and* *……* *(d) the proponent has complied with the general duties required by section 43* *(e) the proponent is a fit and proper person to hold the approval.* This amendment should also be reflected in clause 76 (Minister's decision in relation to statement).
74	• Ensuring considered decision-making	This clause should be amended to enable the Minister to extend the timeframe for making a decision where appropriate.
84	• Integrating climate change	***Conditions of environmental approval*** Insert the following: *……..* *(4) without limiting (1), conditions may include:* *(a) requirements to minimise emissions, meet certain standards, or fully offset greenhouse gas emissions that cannot be minimised or avoided, and* *(b) requirements to ameliorate the identified impacts of climate change.*

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
101	• Strengthening environmental rigour and accountable decision-making	This clause should be amended as follows: …… *(2) Before making a decision to approve an application, the Minister must be satisfied that:* ……. *(d) the action is consistent with the scope and conditions of the environmental approval given after the strategic assessment;* *(e) the community has been appropriately and adequately consulted about the specific nature of the action sought to be carried out under the approval notice; and* *(f) the granting of the approval notice is consistent with the objects of the Act.* ***....*** *(6) Division 6 of Part 5 (conditions of environmental approval) applies to approval notices in the same way as it applies to environmental approvals.*
106	• Strengthening environmental rigour and accountable decision-making	The clause should be amended to insert the following: *(1A) Prior to granting an amended environmental approval, the Minister must be satisfied that amending the approval:* *(a) will not result in any detriment to the environment, and* (b) *is consistent with the objects of the Act.*
125	• Strengthening environmental rigour and accountable decision-making	This clause should be amended to insert the following: *(1) The Minister may establish environmental offsets framework for the use of environmental offsets under this Act or an Act prescribed by regulation, including for the purpose of offsetting climate change impacts of actions under this Act.* *(2) The Minister may, by Gazette notice, publish guidelines for the environmental offsets framework.* *(2A) The Minister must be satisfied that any guidelines made under (2) above promote the objects of the Act.*
230	• Enhancing accountability and access to justice	This clause should be amended as follows: **Who may bring proceeding**

Attachment A – proposed amendments to the *Environment Protection Bill*

<table>
<tr><th>Bill clause</th><th>Issue(s) addressed</th><th>Suggested amendments</th></tr>
<tr><td></td><td></td><td><u>Any person may apply to the court for any injunction or another order under this Division to remedy or restrain an alleged act or omission that contravenes or may contravene this Act.</u></td></tr>
<tr><td>276</td><td>• Enhancing accountability and access to justice</td><td>Standing for judicial review
<u>Option 1 (preferred)</u>
Any person may seek judicial review of an act or omission of the Minister, the CEO, the NT EPA or an environmental officer under this Act.
<u>Option 2</u>
(1) A person may seek judicial review of <u>an act or omission of</u> the Minister, the CEO, the NT EPA or an environmental officer under this Act if the person is:
(a) a proponent of an action to which the decision relates; or
(b) an applicant for the decision; or
(c) a person directly affected by the decision; or
(d) <u>a person residing in, or an organization based in, the Territory</u>.</td></tr>
<tr><td>Schedule (277)</td><td>• Enhancing accountability and access to justice</td><td>Schedule 1<table><tr><th>Reviewable decision</th><th>Affected person</th></tr><tr><td><u>Decision of Minister under s69 to grant an approval, refuse an approval or grant an amended an approval</u></td><td><u>Any person</u></td></tr><tr><td><u>Decision of Minister under s101 in relation to approval notice</u></td><td><u>Any person</u></td></tr></table></td></tr>
<tr><td>282</td><td>• Enhancing accountability</td><td>This clause should be amended to include the following:
(1) <u>(c) it is in the public interest to withhold the information, having taken into account the objects of the Act</u></td></tr>
<tr><td>284</td><td>• Enhancing transparency</td><td>This clause should be amended as follows:
(2) The CEO must include in the public register the following information ~~information required by regulation:~~</td></tr>
</table>

Attachment A – proposed amendments to the *Environment Protection Bill*

Bill clause	Issue(s) addressed	Suggested amendments
		(a) Referrals *(b) Environmental approvals and approval notices* *(c) Mandatory environmental audits* *(d) Environmental bonds* *(e) Environment protection notices* (f) *Any other information required by regulations*
288	• Enhancing accountability	This clause should be amended as follows: …… *(2A) Prior to making a decision under (2), the Minister must consider whether the decision is in the public interest and whether the decision is consistent with the objects of the Act.*
312	• Strengthening environmental rigour and accountability	This clause should be amended to replace '3 years' in s105 of the Mining Management Act with '1 year'
315	• Strengthening environmental rigour and accountability of NTEPA	Clause 315(1) should be deleted (i.e. s 25AA(1) of the NTEPA Act should be retained).