



Environmental  
Defenders Office

**Submission to the Territory Economic Reconstruction  
Commission**

**24 July 2020**

## About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

**[www.edo.org.au](http://www.edo.org.au)**

### Submitted to:

Territory Economic Reconstruction Commission

Lodged online: <https://ntrebound.nt.gov.au/submissions/make-a-submission>

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### 1. Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Territory Economic Reconstruction Committee (**Commission**).

We first wish to acknowledge the Northern Territory Government (**NTG**)'s timely and evidence-based response to COVID-19 to date, which has seen the Northern Territory avoid the scale of tragedy that is still unfolding elsewhere, and has seen it become the safest place to live in Australia.

We also commend its efforts to, in cooperation with other states/territories and the Commonwealth, to cushion individuals and small businesses from the economic impact of the “lockdown” and other restrictions.

We acknowledge the enormous challenge now facing the NTG to develop the medium- and long-term economic recovery strategy that is required. Given EDO's role as environmental law experts, our submission focuses on identifying legal principles that we consider essential to guide the ongoing work of the Commission and ultimately, the NTG in its plans for economic recovery. Within the framing of each of the two principles we have identified, we have outlined in brief how each may be applied in the Territory context.

#### ***Principle 1: Laws passed for economic and social recovery must put us on a path to a safe and healthy climate and recover biodiversity***

The pathway to economic recovery is an opportunity to shift our economy toward a safe climate and better environmental future through well-designed regulation.

EDO considers that all governments, including the NTG, must resist the temptation to pass laws with adverse long-term implications, or to entrench our economic recovery in industries without a long-term sustainable future.

The need to stimulate the Territory's economy following the COVID-19 crisis should be used as an opportunity to recover from the other, less visible, crises currently in progress – the climate crisis and the biodiversity crisis – and to rapidly up-scale our response to those challenges.

Climate change will affect the Territory economy, as well as livelihoods and lives, in a myriad of ways. The loss of the Territory's biodiversity through land use change and climate change will continue to affect our quality of life and key industries that rely on our natural environment, including tourism and agriculture.

The science tells us that the next 10 years are critical to ensure we have a safe climate and an environment that will provide for future generations. It is imperative that any laws passed to stimulate the economy seize that opportunity.

In response to these challenges, laws can provide investment certainty to renewable industries, stimulate local jobs in long-term industries such as regenerative agriculture and land management, and guarantee this generation and future generations a safe and healthy environment through sending signals to investors and removing perverse incentives. Positive incentives can be implemented for biodiversity conservation, including through accounting for the true value of environmental assets in decision-making, and incentivising environmental restoration activities. Communities and sectors can

be empowered and resourced across Australia to develop action plans to transition away from high greenhouse gas emitting processes to sustainable, healthy and prosperous pathways forward.

For these reasons, we consider that any changes to laws that occurs to facilitate economic recovery plans must:

- a. Be consistent with the principles of ecologically sustainable development, including the precautionary principle and inter-generational equity, by ensuring that decisions made now maintain and enhance the health, productivity, and diversity of the environment for the benefit of future generations;
- b. Facilitate economic reform to ensure a fair, safe and healthy climate for current and future generations, recognising that human health and ecosystem health are inextricably linked; and
- c. Improve legal protections for nature, ensure the health of our ecosystems and species is stabilised, and invest in recovery and regeneration of nature.

### **What does this mean for the Territory?**

EDO considers that the NTG should use this opportunity to accelerate the shift to a low carbon economy and to remedy defects in past regulation. This should be done without making the mistake of withdrawing funding for existing environmental programs or amending existing environment and cultural protections (see further below).

#### ***Laws to accelerate action on climate change and the protection of nature***

The economic stimulus should be future-focused and address the need for the Territory's economic transition to a low carbon economy to address the risks and embrace the opportunities of our export markets changing in response to the need reduce greenhouse gas emissions in accordance with the Paris Agreement.<sup>1</sup>

Ideally, this transition to a low carbon economy should therefore occur through long-term planning under the structure of a Climate Change Act in terms like those in effect in Victoria, New Zealand and the United Kingdom.

However, the NT does not currently have an overarching, comprehensive legal framework aimed at limiting warming to within globally agreed goals. Failing to implement adequate legal responses to the serious and system-wide impacts of climate change will have far-reaching and long-term consequences for Territorians, in particular for remote Aboriginal communities, as well as for the spectacular natural environment at the heart of the NT lifestyle and economy. EDO has therefore developed proposal for a Climate Change Act for the Northern Territory.<sup>2</sup>

A Climate Change Act would deliver an accountable decision-making and policy framework for action to align the NTG's policies with the global goals set by the Paris Agreement and ratified by Australia, and to appropriately respond to the many, escalating challenges climate change presents.

Under our proposed model, a Climate Change Act for the NT would (amongst other things):

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<sup>1</sup> The *Paris Agreement* is an agreement, to which Australia is a party, made under the *United Nations Framework Convention on Climate Change*. The *Paris Agreement*, among other things, commits parties to the goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels (see Article 2.1(a)).

<sup>2</sup> <https://www.edo.org.au/wp-content/uploads/2020/06/A-Climate-Change-Act-for-the-NT-2.pdf>

- deliver a clear, strategic and accountable plan to achieve the required GHG emissions reductions;
- drive low-carbon investment and innovation, and lower the cost of a just transition to a low-carbon economy;
- provide certainty and confidence for business and civil society, with positive influence on investor confidence; and
- deliver a range of positive economic and social benefits.

There are also many actions that can be implemented immediately (while an Act is under development) to drive the move to a low carbon and resilient economy, as identified in the NTG's recently released *Climate Change Response: Towards 2050*<sup>3</sup> and associated *Delivering the Climate Change Response: Towards 2050 – A Three Year Action Plan for the Northern Territory Government*.

It is essential that NTG departments, in particular the newly established Office of Climate Change, are adequately and appropriately resourced to so that all of the commitments in the Climate Change Action Plan can be implemented and fully delivered as a matter of priority.

Examples of some key actions already committed to in the Action Plan that would support economic stimulus and recovery to ensure it accelerates the shift to a low carbon economy, and supports the resilience and recovery of the NT's natural environment, include:

- The Emissions Reduction Strategy (deliverable 1.2.1) to identify and set interim targets, timeframes and mechanisms to achieve the net zero emissions by 2050 while maximising opportunities for Territorians;
- Implementing reforms to the Territory Electricity Market (deliverable 1.4.3);
- Delivering an overarching climate change response and adaptation strategy (deliverable 2.1.1);
- Delivering agency infrastructure, assets and services climate adaptation frameworks (deliverable 2.3.3);
- The Biodiversity Maintenance and Restoration Strategy (deliverable 2.4.2), which would identify opportunities to invest in medium to long term environmental recovery and regeneration projects.

The recently released NT Renewable Hydrogen Strategy<sup>4</sup> also identifies key actions to enable the development of a renewable hydrogen industry, which includes to “review existing legislation, regulations and standards as needed to enable legal frameworks that can support hydrogen safety and industry development” (point 5, p17). Such actions could also be progressed immediately as part of the low carbon transition strategy that should be at the heart of economic recovery plans.

Finally, we consider that there would be a range of additional opportunities for economic stimulus that could be developed through medium term legal and regulatory reform focused on recovery and restoration of the natural environment.

For example, there is currently no appropriate legal and regulatory framework to underpin modern conservation action, adapted to the unique Territory context. In response to this critical gap, EDO has developed a proposal for a Land Management and Biodiversity Conservation Act for the Northern

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<sup>3</sup> [https://denr.nt.gov.au/\\_data/assets/pdf\\_file/0005/904775/northern-territory-climate-change-response-towards-2050.pdf](https://denr.nt.gov.au/_data/assets/pdf_file/0005/904775/northern-territory-climate-change-response-towards-2050.pdf)

<sup>4</sup> [https://business.nt.gov.au/\\_data/assets/pdf\\_file/0014/905000/nt-renewable-hydrogen-strategy.pdf](https://business.nt.gov.au/_data/assets/pdf_file/0014/905000/nt-renewable-hydrogen-strategy.pdf)

Territory.<sup>5</sup> Amongst other things, this would set a framework for incentive mechanisms for conservation, restoration and regeneration on private land including the pastoral estate and Aboriginal land (such as funding arrangements, partnerships, and legal tools such as covenants and agreements). These legal mechanisms could underpin practical restoration activities and infrastructure investment, as well as enable long term conservation and support environmental services for key NT industries (including tourism and agriculture).

### **Laws to respond to existing problems and regulatory defects**

EDO considers there is clear stimulus potential for regional areas in solving existing problems that have been created by past and ongoing regulatory failures.

A key example is the need to properly fund the rehabilitation of the Territory's many abandoned and unrehabilitated mines,<sup>6</sup> such as Rum Jungle Mine near Batchelor and Redbank Mine in the Gulf of Carpentaria. This would generate local employment opportunities in remote areas, as well as providing a critical investment in the regeneration of the NT's environment, and responding to risks to community health and well-being. Associated with such activities would be the implementation of critical legislative reforms to the *Mining Management Act 2001* (including to introduce 'chain of responsibility' provisions) to ensure that such liabilities do not again (or continue to) accrue to the Territory (and taxpayer) in the future.

Further, we consider that there are key areas related to the environment and natural resource management, including water and sustainable land management, that require urgent regulatory reform. This should be prioritised in the context of economic recovery plans. The ability to appropriately safeguard such critical environmental services will have a significant impact on the medium- and long-term outcomes for the natural environment, communities and the industries that the Commission's interim report (**Interim Report**) focuses on, including manufacturing, water and agribusiness.

It is therefore essential that proper regulatory and governance frameworks are in place before progressing any significant development of new or expanded industries. This will ensure economic recovery measures do not undermine the ability of the Territory to guarantee a fair, safe and healthy climate, a healthy environment, and an equitable and fair economy, for current and future generations.

Key areas for reform that should be progressed as a matter of priority include:

- **Water governance and regulation** – The *Water Act 1992* is in urgent need of reform to ensure it is a suitable legal framework to respond to water use and security in the future. The NTG must proceed with the full suite of reforms articulated in its Water Regulatory Reform Directions Paper<sup>7</sup> to deliver a more robust, accountable, and transparent water regulatory framework that is legally underpinned by science, particularly with respect to water allocation and prioritisation frameworks.

The serious and long term ecological, economic, social, and political challenges faced by southern states in the Murray Darling Basin provide a stark warning about how failures of water law and governance can have catastrophic outcomes for the environment and communities. With new and expanded industries proposed for the Territory, together with the existing risks posed by climate

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<sup>5</sup> For further details, see: <https://www.edo.org.au/publication/a-biodiversity-conservation-and-land-management-act-for-the-northern-territory/>

<sup>6</sup> See: <https://dpir.nt.gov.au/mining-and-energy/mine-rehabilitation-projects/about-legacy-mines/introduction>

<sup>7</sup> <https://haveyoursay.nt.gov.au/waterreform>

change, the need for these reforms to be progressed as a matter of priority to underpin any economic recovery strategy, and in close consultation with the community, is essential.

- **Sustainable land management and land clearing regulation** - With existing threats arising from climate change, pests and weeds, and degradation from historical uses including pastoralism, the growing risk for loss and degradation of native vegetation is an ongoing threat to the NT's biodiversity and the resilience of its ecosystems – which will also impact on key industries including tourism and agriculture.

In EDO's experience, the NT's current environmental laws have failed to effectively regulate land clearing and to mitigate potentially significant impacts agricultural development. The proper regulation and sustainable management of native vegetation, together with a comprehensive framework to establish and guide modern conservation policy, would deliver significant benefits for the NT's environment and communities, and therefore ultimately, its economy. The EDO's proposal<sup>8</sup> for a new Land Management and Biodiversity Conservation Act for the Territory would assist in overcoming these issues and is a model that could be adopted by the NTG.

In our view, the NTG should commit to these legal and regulatory reforms as a key baseline component of any economic recovery plans, to ensure the long-term ecological sustainability for the Northern Territory.

### **Recommendations:**

- **The need for economic stimulus should be used as an opportunity to hasten the Territory's transition to a low carbon economy, focus on creating jobs in low emission industries and supporting recovery and restoration of the natural environment, including through critical enabling legal and regulatory reforms;**
- **The NTG should take the opportunity to use economic recovery to solve existing problems created by past regulatory failure (e.g. legacy of abandoned mines), existing regulatory gaps and failure (e.g. water governance and sustainable land management) and gaps and barriers to ecologically sustainable development (e.g. incentives for conservation on private land).**

### ***Principle 2: Economic stimulus and recovery measures must maintain or improve laws, processes and standards for environment and cultural heritage protection, transparency and accountability and empower Aboriginal people***

A key risk of short-term economic stimulus and recovery measures is the introduction of laws to facilitate development that will weaken environmental protections, lock in long term environmental damage and weaken public rights in relation to development proposals. The Commission should resist the suggestion that deregulation (i.e. the removal of protections for the community and the environment) is the path to economic recovery.

### **A deregulation agenda has long-term risks**

Australia's environmental values are being eroded to the point of an ecological crisis.

Evidence was given by the Threatened Species Commissioner to the Royal Commission recently that the status of biodiversity in Australia is "poor and worsening" and that Australia extinction rate is the 4<sup>th</sup>

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<sup>8</sup> For details, see: <https://www.edo.org.au/publication/a-biodiversity-conservation-and-land-management-act-for-the-northern-territory/>

highest globally. The Interim Report of Senate Inquiry into the Faunal Extinction Crisis<sup>9</sup> found that faunal extinctions are direct link to the weakness of our environmental laws. The recent destruction of an ancient heritage site of the Puutu Kuntjira traditional owners in the western Pilbara by Rio Tinto is a sobering example that Australian laws do also not adequately protect our cultural heritage.

In EDO's experience, the NT's environmental laws are among the weakest (if not the worst) of all the states and territories in Australia.

An approach framed by deregulation not only has the potential to decrease protections for the environment, natural resources (such as land and water) and the community while the need for stimulus remains, but creates the risk that such protections will be permanently weakened without the benefit of even a transparent policy process or a thorough evaluation of the benefits created by such regulations. Any decision to make changes to environmental or cultural protection laws should be informed by a thorough evaluation of the performance of the regulation against the objectives set by Parliament in the legislation itself.

### **What does this mean for the Territory?**

It is vital that economic responses to COVID-19 in the Territory:

- a. Adopt the principle of non-regression of environmental standards, laws, policies, and protections.
- b. Empower Aboriginal people to protect Country.
- c. Guarantee meaningful public participation in environmental decisions, including through merits review.
- d. Are guided by open and transparent processes, include diverse viewpoints including Aboriginal people and are subject to rigorous independent oversight which involve public scrutiny.

We note that the Commission's First Report includes a call for the Territory to 'become the easiest place in Australia to do business' (First Report, p 12), which is intended to happen through 'smart regulation and administration'. While regulatory and administrative efficiency is clearly important, the Territory should resist calls to 'fast-track' approvals for major projects with changes to the law.

It should instead ensure that the agencies responsible for assessing applications for environmental approvals and applications for allocations of resources (such as water and minerals) (i.e. the NT EPA and the Department of Environment and Natural Resources) have the resources and staff they need to make decisions efficiently without compromising environmental standards. This has the co-benefit of continuing the NTG's role as a direct creator of jobs.

The introduction of a major projects coordinator type role is not necessarily of concern, on the assumption that it focused simply on the coordination of sector-based approvals and does not remove existing portfolio-based responsibilities<sup>10</sup>. However, EDO would strongly object to any suggestion that the new approval role for environmental approvals introduced by the *Environment Protection Act 2019* (which commenced on 28 June 2020), could be delegated away from the Minister for the Environment to another decision-maker, or otherwise amended.

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<sup>9</sup> See:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Faunalextinction/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalextinction/Interim_report)

<sup>10</sup> This includes ensuring that the Minister for the Environment retains its responsibilities with respect to environment and water approvals under the *Environment Protection Act 2019* and *Water Act 1992*.



In this respect, we note that the NTG has just undertaken a comprehensive environmental law reform process (which included detailed stakeholder consultation) to significantly modernise the processes for environmental approvals, through the *Environment Protection Act 2019*. It would be highly counterproductive to undermine or override these reforms, particularly given a key rationale underpinning this reform was to give clarity and certainty for proponents of development and major projects including with respect to approval timeframes.

It is also important to offer the reminder that environmental approval processes, with in built public engagement and accountability measures, exist for extremely important reasons - the consequences of these decisions have far reaching and long-term impacts on communities and the environment. The history of the Territory's environmental laws demonstrates that they consistently failed to adequately safeguard against serious environmental, social, and cultural impacts from development in the Territory. The transformation intended by the *Environment Protection Act 2019* must therefore not be disturbed or amended in any manner that would involve regression of environmental standards or public participation, accountability and transparency mechanisms to guide how decisions are made<sup>11</sup>.

While the Territory faces an enormous health and economic challenge, we consider that there is equally an opportunity to get the legal settings right. By adhering to the principles identified in this submission, the Commission and the NTG can ensure that it leads the Territory to a future where nature thrives.

#### **Recommendations:**

- **The Territory government should resist suggestions that the economy can be stimulated through the removal of protections for the environment and the community and should instead focus on alternative ways of ensuring that major projects are assessed efficiently, such as through ensuring that the relevant government agencies are appropriately staffed and resourced .**

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<sup>11</sup> For further detail, see: <https://www.edo.org.au/2020/06/25/environmental-law-northern-territory/>