Subject: FW: comments in response to draft Environment Protection Bill and Regulations

From: justin T
Sent: Sunday, 2 December 2018 5:35 PM
To: environment policy <environment.policy@nt.gov.au>
Subject: comments in response to draft Environment Protection Bill and Regulations

I strongly support the general thrust of the draft EIA laws.

In particular, I have long been frustrated by the disconnect between assessment and approval, and I welcome the clear line of sight and unambiguous chain of responsibility that extends from the proposed empowerment of the Environment Minister to grant or deny approval, on advice from the NTEPA.

I won't go in to detail about those features I strongly support, suffice to say that I welcome the new laws and appreciate the effort that has brought us to this place.

I will outline the few deficiencies I can identify - a couple quite significant. That in no way is intended to dismiss the welcome reform and restructure that the draft laws represent.

Significant flaws

paucity of regulatory resources

The NT environment laws as they stand are stymied by a general lack of sufficient resources for implementation, administration, monitoring, enforcement and prosecution. New laws alone will not address this shortcoming. Routine inspections of existing high-risk approvals are demonstrably inadequate. We have recently been told that any new overhead would necessitate removing current resources from existing duties.

The NT is currently facing an unprecedented array of environmental threats in the form of an emergent fracking industry. Unlike other resource exploitation schemes, that have significant risk focused on a single site, the atrocious erroneous decision to lift the moratorium on fracking and instantiate new regulations for this unprecedented industrial threat unleashes a new scale of risk : one that is widespread across fields of wells, with potential significant impacts beyond the granted leases. The NT remains woefully incapable of meeting the demands of the full scope of regulation of this new threat. Quite clearly fracking should be

outlawed, but if it is to proceed then we need to find a source of significant additional resourcing for new capabilities and capacity to meet these new responsibilities.

poor standing of NTEPA

A tagcloud of the draft laws is dominated by the NT EPA. Indeed, new specific responsibilities are proposed for this 'independent' body. It's quite awkward, then, to recognise that the NTEPA has recently dashed its credibility, with an Assessment Report for the McArthur River Mine that abandons not only the substance and direction of the draft EIS, but also the detail of responses; any appreciation of the unacceptable scale of impact to date; professional standards for managing unbound risks; and common sense and rationality.

I strongly recommend that, based on the abrogation of responsibility explicitly expressed by the NTEPA's approach to rehabilitation and closure of the pollution engine that is McArthur River Mine, significant, overt, decisive intervention from parliament is required for this body to regain any credibility. I would expect that those who have worked to this point on the reform of NT environmental law might be painfully conflicted to have so much riding on such an unreliable 'authority'.

<u>Other concerns</u>

standards for consultation

I find the draft weak on consultation standards. I have recommended in previous fora that environmental assessment laws should set targets for community engagement, rather than consultation actions. If a significant development does not meet targets for engagement, that consultation attempt has failed and should be remade. Rather than setting (brief) timelines for consultation, I recommend targets for engagement as milestones along the assessment process.

third party appeals

I am disappointed in the extra-procedural ministerial decision to effectively abandon the commitment to third party appeal rights. The two-faced NT ALP went to the last election with a commitment that: *Decisions made under this new suite of laws will be reviewable / appealable decisions under Northern Territory Civil and Administrative Tribunal (NTCAT)* – consistent with best practice.

However, the (acting) minster recently backflipped, to disallow merits review and narrow the scope of judicial review to those directly affected (and already engaged in the process).

If, as claimed upon announcement, the decision was based on industry feedback, I urge the minister to share the substance of that feedback with the public. Which voices were listened to, leading to the bizarre decision to abandon this feature even before the public consultation on the draft laws has concluded? Because so far, all the public know is that the Sunday paper featured a column saying the minister must remove this feature; and within 2 days the instructions were followed.

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NT Weekend

06 OPINION

MATT CUNNINGHAM sky NEWS

Take the brakes off

The Territory's economy will never improve if we continue to allow anyone and everyone to comment

THE first LNG tanker pulled out of Darwin harbour late on Monday night marking an historic moment for Inpex's $54 billion Ichthys Darwin LNG project.

It's more than six-and-a-half years since Inpex made its final in-

Buried deep in the detail is a proposal that could see any project caught up in expensive legal battles for years.

The draft legislation allows for third party appeals to any decision made "by the Minister, NT EPA, CEO and environmental officers".

to be at the whim of Canberra when it comes to funding.

The Northern Territory Budget is already in a dire state.

Putting the handbrake on the economy will only make that situation worse, and the excessive third-party appeal process that have been proposed will do just that.

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It is noteworthy that these instructions came from an agent of Sky News, a particularly objectionable arm of a foreign disinformation network, that has in recent months been subject of ongoing scandals regarding promotion of white supremacist propaganda. Notably, the notorious racist Adam Giles (who once told Indigenous Territorians to '*piss off out of Darwin*') welcomed the notorious racist Blair Cottrell (who once declared all primary school classrooms should have a portrait of Adolf Hitler) to share their hateful racist ideas on this hateful racist network. Reasonable Territorians, with no other evidence regarding this bizarre ministerial decision, are left wondering why this extremist disinformation source has imposed such undue influence over NT environmental law.

Strategic environmental assessment

I despair that laws to define SEA, promised over 10 years ago, remain out of reach.

Instead we find a 'strategic assessment' function of the NTEPA which appears to offer proponents the opportunity of bulk-approval. This has previously been proposed (by prervious governments) as a mechanism for broad approval of fracking at a regional or gasfield scale. This is not what we discussed in previous fora (including the consultation for the instantiation of the NTEPA). SEA in other jurisdictions is a mechanism for government to adequately investigate the cumulative impact of a particular type of development, or impacts upon a particular ecosystem or region, so that significant concerns do not 'fall through the cracks' of successive approvals. This should not be a mechanism to bypass those approvals, but rather to ensure all parties that cumulative, long term and broad-scale impacts are adequately considered. SEA should contribute to, rather than override, regular EIA.

I remain particularly concerned that this will be abused to push fracking out across the NT without due attention to the unprecedented risk and impacts.

I recommend we go back to the drawing board on this one.

Once again, I welcome the new laws and extend gratitude to those who have worked on this reform project. I hope that most of the caveats I have raised can be addressed reasonably well outside the legislation, and I urge government to do so as a priority. I recommend revisiting the bad decision to disallow full third party appeal rights, as consistent with best practice decision making. I also highlight my dissatisfaction with the direction of 'strategic' assessment under the draft.

I welcome any further opportunity to contribute to improved environmental laws and processes in the NT.

Justin Tutty