

Fact sheet 9: More public participation and scrutiny

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Public participation, transparency, accountability and review opportunities in the new environment protection legislation

Introduction

The development of the new draft environment protection Bill and draft environment protection Regulations was guided by a group of core principles, including transparency and accountability. Accordingly, the new environmental impact assessment process provides far greater public participation opportunities and increased scrutiny of decision-making than existing processes.

Public participation and access

The draft legislation provides for increased opportunities for public participation and access to information throughout the environmental impact assessment and approval process. This includes:

- publishing all assessment documentation and making this available for public scrutiny, and increased opportunities for the public to comment on documentation prepared during the assessment process
- publishing all comments received during the environmental assessment process
- publishing all environmental approvals granted by the Minister for Environment and Natural Resources
- publishing all proposed variations to assessed projects and making these available for public scrutiny and comment.

Transparency and accountability of decision making

The draft legislation provides public access to decision-making through the preparation and publication of a statement of reasons for decisions, including:

- decisions taken by the NT EPA in the impact assessment process, including that a proposed action does or does not require an environmental impact assessment
- decisions by the Minister for Environment and Natural Resources to grant or refuse to grant an environmental approval

- decisions by the Minister relating to the declaration of environmental triggers and Territory Environmental Objectives
- decisions by the Minister relating to the declaration of prohibited actions and protected areas.

Public access to information about environmental impacts

The draft legislation will ensure transparency about how the outcomes of an environmental impact assessment process is translated into subsequent approvals and ongoing compliance against an environmental approval.

The draft Bill establishes requirements for documentation to be kept in public registers and made publicly available. This includes:

- any monitoring reports or other material submitted as a condition of an approval
- outcomes of environmental audits that may be conducted
- data and other environmental information collected by or on behalf of government
- details of environment protection notices that may be issued
- the outcomes of compliance and enforcement activities.

Review (appeal) processes

The Northern Territory Government has considered a number of options that will allow the review (appeal) of decisions made under the new environmental regulatory system for the Territory.

The draft legislation includes review provisions that are broadly consistent with the recommendations made in the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory which included open standing for judicial reviews, and broad standing for merits reviews.

Judicial reviews with open standing

The draft environment protection Bill and draft Regulations include provisions that will allow for the following decisions, made under the Territory's new environmental regulatory system, to be available for judicial review with open standing:

- decisions made by the Northern Territory Environment Project Authority (NT EPA) as part of the environmental impact assessment system. For example, decisions made by the NT EPA on whether or not to accept a referral about a project for an environmental impact assessment, or decisions made in relation to the preparation of an assessment report by the NT EPA and either a draft environmental approval or a statement of unacceptable impact for the Environment Minister's consideration, will be available for a judicial review
- decisions made by the Minister for Environment and Natural Resources about whether to grant (or refuse) an environmental approval after an environmental impact assessment
- licence or permit decisions made by the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources (DENR) or their delegate.

Merit reviews

Decisions made under the new environment protection legislation by the Minister for Environment and Natural Resources, or decisions made by the CEO of the DENR or their delegate that relate to licence or permit decisions, will be open to a merits review by the Northern Territory Civil and Administrative Tribunal (NTCAT).

Standing for reviews by NTCAT will be available for:

- proponents
- persons who are directly or indirectly affected by the decision
- members of an organised environmental, community or industry group
- Aboriginal Land Councils
- Registered Native Title Prescribed Body Corporate and registered claimants under the *Native Title Act*
- local government bodies, and
- persons who made a genuine and valid objection during any assessment or approval.