



3 August 2022

Environment Policy
Department of Environment, Parks and Water Security
16 Parap Road
PARAP NT 0800

Via email: environment.policy@nt.gov.au

To Whom it May Concern,

Draft Environment Protection Legislation Amendment (Chain of Responsibility) Bill

The Environment Centre NT (“ECNT”) is the peak community sector environment organisation in the Northern Territory of Australia, raising awareness amongst community, government, business and industry about environmental issues, assisting people to reduce their environmental impact and supporting community members to participate in decision-making processes and action. Thank you for the opportunity to provide a comment on the environmental regulatory reform information paper on the consultation draft of the *Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022* (Draft Bill).

ECNT is supportive of the Northern Territory Government’s continuing work on environmental regulatory reform. ECNT commends the Northern Territory Government on its proposal to introduce environmental chain of responsibility provisions to the EP Act and the Environment Protection Regulations 2020 (“Draft Bill”). Introducing some form of chain of responsibility provisions is necessary to ensure that polluters and their related entities actually pay for the environmental damage that they cause, consistent with the ‘polluter pays’ principle set out in section 24(2) of the *Environment Protection Act 2019 (NT)* (“EP Act”).

1. Unacceptable exclusion of mining (and other environmentally harmful industries) from the application of the Draft Bill

ECNT is disappointed that the Northern Territory Government has capitulated to the demands of the mining industry so that the Draft Bill no longer applies mining (and other environmentally harmful industrial activities), but only onshore gas development. ECNT notes that the original proposal consulted upon by the Northern Territory Government in 2021 was to apply to mining as well as petroleum.

This is a missed opportunity to take a fundamental step to fix a broken mining regulatory system, and raises serious questions about the fairness of the legislation, which targets a single industry with no clear justification. It also raises serious questions about the influence of the mining lobby on the Northern Territory Government.

ECNT notes that the Northern Territory’s mining regulatory regime has produced a number of toxic mine sites that are (or will be) a significant liability for the Northern Territory Government and ultimately Australian taxpayers. These include Redbank mine, Rum Jungle, Mount Todd, and Nathan River Resources (which has been recently prosecuted for toxic discharges into the Towns River, and which we understand is currently in care and maintenance). The burden of living with these contaminated sites is disproportionately imposed upon Indigenous communities and Traditional

Owners. It is unacceptable that the mining industry in particular has been excluded from the application of these important reforms given this context. ECNT notes that equivalent legislation passed in Queensland was famously dubbed the “Clive Palmer Bill” (in reference to Mr Palmer’s Townsville toxic Townsville refinery operated by liquidated Queensland Nickel). ECNT notes that the Draft Bill would not apply to Clive Palmer in similar scenario in the Northern Territory.

ECNT urges the Northern Territory Government to redraft the bill so that it applies to mining and other environmentally harmful industries, and is not restricted to the onshore gas industry.

2. Related person and relevant connection to a high risk entity (ss 192C and 192D)

ECNT is heartened to note that the definition of “related person” has been expanded to include previous holders of a particular environmental obligation (ie a person who has had a relevant connection to a high risk entity). However, ECNT is concerned that a cap of 3 years has been put on this definition. The justification for this narrow timeframe is not provided. In ECNT’s view, there should not be a time limit, since this will diminish the policy objective of encouraging companies with environmental regulatory obligations to carry out thorough due diligence on potential buyers to ensure that potential purchasers would be able to fulfil any rehabilitation obligations.¹ Furthermore, ECNT is concerned by the high degree of discretion vested in the CEO regarding whether a person has a relevant connection with a high risk entity (for example, while a list of relevant factors are listed, there is no guidance about what weight should be afforded to each of them).

ECNT notes that the definition of “relevant connection” was not expanded to include assessment of both the financial benefit that the potentially related person derives, or has derived, from the activity of the company. Kept the narrow focus around 'influence' and not those that may financially benefit. The QLD Chain of Responsibility review provides good commentary on why a broad definition is useful and necessary, see [here](#).

ECNT is very concerned that the definition of “related person” does not include liquidators, receivers, receivers and managers, or administrators. In the Northern Territory, external administrators are frequently appointed (particularly in relation to mines), who can then avoid responsibility for ongoing environmental damage. This exemption thus undermines a fundamental purpose of chain of responsibility laws, which is to ensure that external administrators of companies should be liable for damage caused by those companies while they are under administration. This exemption must be removed or qualified.

3. Power of the CEO to issue environment protection notices

In ECNT’s view (and consistent with the regulatory regime for the onshore gas industry), the Environment Minister rather than the DEPWS CEOs should have approval power with respect to licences, registrations and ancillary functions. ECNT refers to page 432 of the Final Report of the Scientific Inquiry into Hydraulic Fracturing, which highlights the importance of the executive (that is the Minister) being the accountable decision-maker:

This approach is consistent with Australia’s Westminster system. It is an important accountability mechanism. In short, if the public does not approve of Ministerial decisions with respect to any onshore shale gas industry, its disapproval may be exercised at an electoral level.

¹ Australian Government Department of Industry, Innovation and Science. (October 2018) “Discussion Paper – Decommissioning Offshore Petroleum Infrastructure in Commonwealth Waters”. Available here: <https://consult.industry.gov.au/offshore-resources-branch/decommissioning-discussion-paper/>

Further, ECNT notes the potential conflict between the CEO's current role as a policy maker and as a regulator. To avoid the perception of conflicts of interest, and to comply with the intent of the Pepper Inquiry, it is crucial that the power to issue environment protection notices be vested in the Minister, not the CEO.

4. High risk companies

ECNT's view is that it is unnecessary to restrict the Draft Bill to 'high risk companies'. We recommend adopting the approach taken in the *Environment Protection Act 1994 (Qld)* which allows a CoR order to be given to a related person alongside an order given directly to the obligation holder, which does not have to be a 'high risk company' (s363AC). In the case of an obligation holder which is a 'high risk company', a CoR order can be issued directly to the related party without having to issue an order to the high risk company itself (s363AD).

We look forward to continuing to engage with the Northern Territory Government to strengthen its environmental regulations to ensure, among other things, that they consistently implement the 'polluter pays' principle. It is our strong view that the taxpayer should not be left to foot the bill for cleaning up toxic sites that only exist because of the profit-seeking activities of project proponents.

If you have any questions, please do not hesitate to contact Kirsty Howey on kirsty.howey@ecnt.org.

Yours faithfully,



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