

Petroleum, Planning and Water Legislation Amendment Bill 2025

Purpose

The Petroleum, Planning and Water Legislation Amendment Bill 2025 is set to be introduced to Northern Territory Parliament in February 2025.

The purpose of the Bill is to amend the Petroleum Act 1984, the Petroleum (Environment) Regulations 2016, Planning Act 1999, Planning Regulations 2000 and the Water Act 1992 to remove provisions for third party merits review of decisions.

This fact sheet explains the differences between a judicial review and a merits review, the reasons for the amendments and how this Bill will only impact third party merits review of decisions.

Background

There are two forms of review that can be used to challenge government decisions:

- Judicial review
- Merits review

Judicial review is a common law right that considers whether a decision was 'lawful' and if the person making the decision was authorised to do so regardless of whether legislated or not. An example of this is the Controller of Water Resources (CoWR) issuing a water licence.

Judicial review is undertaken by the Northern Territory Supreme Court, who may uphold a decision or return the decision to the decision maker for a decision to be made lawfully. The substance of the decision may not change because of judicial review.

Merits review is only available where legislated. A merits review considers whether a decision was correct and preferable in accordance with the law and that the decision made was the best that could have been made based on the relevant facts and available information to the decision maker.

Merits review provisions apply inconsistently across Northern Territory (NT) legislation. In determining how the merits review process operates, there are two considerations:

- 1) which decisions are reviewable (known as 'scope'); and
- 2) who can seek a review of those decisions (known as 'standing').

The legislation establishes which decisions can be reviewed. Examples include the Minister's decision to approve a petroleum Environment Management Plan under the Petroleum (Environment) Regulations, and a decision of the Controller of Water Resources to grant a licence to extract water under the Water Act.

As a general principal, standing for applicants (or proponents) to seek a merits review is considered important for procedural fairness on the basis that the applicant is the most directly affected by a decision. Standing to seek a merits review is also available currently to third parties for some decisions under the NT *Petroleum Act 1984*, *Petroleum (Environment) Regulations 2016*, *Planning Act 1999* and *Water Act 1992*.

The NT Civil and Administrative Tribunal (NTCAT) conducts merits reviews. A merits review process can alter a decision, send the decision back to the decision maker for reconsideration, or the original decision may be upheld or replaced with what the reviewer believes is the correct or preferable decision based on all the facts of the matter.

Scope

This Bill makes amendments to the NT *Petroleum Act 1984*, *Petroleum (Environment) Regulations 2016*, *Planning Act 1999*, *Planning Regulations 2000* and *Water Act 1992*.

This Bill will only impact the ability of third parties to seek merits review of decisions.

Some facts

Merits reviews are intended to improve decision making by increasing transparency and accountability and in doing so, build confidence in decisions. They provide proponents and other parties with an avenue of procedural fairness for an adverse decision.

The provision of third-party review of the merits of a decision does, however, create uncertainty for business and the regulator. Providing third parties with standing can increase the risk of project delays and disruption to the decision-making process and costs for both industry and government.

The cost of seeking a merits review to NTCAT is inexpensive to a third party, with considerable costs incurred by government and proponents in seeking legal advice, compiling document briefs, and attending hearings.

Any decision subject to merits review still stands while the process is underway, although proponents are often reluctant to move forward with their project at the risk of the decision being overturned.

Projects that have been delayed due to merits reviews by third parties under the *Water Act 1992*, *Planning Act 1999* and *Petroleum (Environment) Regulations 2016* include most notably Fortune Agribusiness horticulture development on Singleton Station and the commencement of the Blake Street development in The Gardens, both which had their respective approvals granted in April and August 2021 with their matters still afoot.

In total, there have been around 20 third party reviews pertaining to 10 decisions of the CoWR since 2020, the majority of which were upheld on appeal.

Removal of the merits review for third parties will reduce the cost to government and proponents.

The amendments will also provide greater consistency across key legislation regulating industry approvals, while still providing judicial review and opportunities to provide feedback through public consultation and notification processes provided for in legislation.

The Bill will reduce the current uncertainty, delays and disruption to the decision-making process and the project commencement borne by the regulatory agency and the project proponent.

Frequently Asked Questions

Q. What does this Bill do?

A. The Petroleum, Planning and Water Legislation Amendment Bill 2025 removes the ability of third parties to seek merits review of certain decisions.

Q. Which legislation does it refer to?

A. This Bill amends the Petroleum Act 1984, Petroleum (Environment) Regulations 2016, Planning Act 1999, Planning Regulations 2000 and the Water Act 1992.

Q. What's the point of the amendments?

A. The amendments remove third party merits review to provide certainty to industry and regulatory processes.

Q. What benefits will it deliver?

A. The amendments provide for greater certainty to proponents and reduce delays in projects and costs to both industry and government.

The amendments will help rebuild the Territory economy without diminishing the rights of Territorians to provide input into regulation of petroleum, water or planning activities.

Q. How will the amendments help the economy?

A. Removal of the merits review process for third parties will reduce costs to both the Territory and proponents.

Merits reviews impose considerable costs on government and proponents in seeking legal advice, compiling document briefs, and attending hearings.

These amendments provide greater certainty to project proponents and investors. There is also a significant opportunity cost of lost revenue from some of these delays.

Q. What are some examples?

A. The Fortune Agribusiness (Singleton Station) water licence has been the biggest delay so far. The merits review took 7 months and the legal challenge of the decision made under review in the Supreme Court exceeds 3 years at this point. While the costs associated with the merits review itself and the subsequent legal challenge is around \$300,000, the opportunity costs of the delays in progressing the development over the past four years is significant. This is a multimillion-dollar project that could generate employment and broader economic opportunities for the region.

Other examples include the Blake Street development in The Gardens which has been delayed since the Development Consent Authority initially granted consent to the project in August 2021.

While in some cases the proponents subject to a decision under review may not delay the commencement of approved activities, they do so at the risk that the decision on review is not overturned rendering their capital outlay worthless and impacted by a future compensation claim.

Onshore gas proponents have to weigh up the costs of having a drill rig on site which could be up to \$100,000 per day sitting idle and the risk of commencing drilling and progressing production pending the outcome of a review decision. This uncertainty acts as a strong disincentive to invest in the Territory.

There are also opportunity costs incurred by government with staff spending inordinate amount of time supporting activities defending the regulator's decisions instead of assessing new projects for a decision or monitoring compliance with approvals.

Q. Does the Bill remove protections that the merits review process offers?

A. This Bill only removes third party merits review, meaning applicants or proponents can still review a decision if the legislation stipulates this may occur.

There is also the option of a judicial review. These amendments do not alter a person's right to a judicial review.

Q. How can someone appeal a decision they disagree with?

A. There are two forms of review that can be used to challenge government decisions:

- 1) Merits review; and
- 2) Judicial review.

Merits review only exists where legislated and considers whether a decision was 'correct and preferable' in accordance with the law and are conducted by NTCAT.

Judicial review is a common law right that considers whether a decision was 'lawful' and is undertaken by the Northern Territory Supreme Court.

Merits review should not be confused with judicial review.

Q. Is this a move away from the recommendations of the Scientific Inquiry into Hydraulic Fracturing in the NT (HFI)?

A. We acknowledge that these changes move away from the recommendation 14.24 of the HFI requiring third party merits review be available in relation to decisions under the Petroleum Act and Petroleum Environment Regulations including, but not limited to, decisions made in relation to the granting of all EMPs.

However, it can be argued that merits reviews are not concerned with the safety of the industry or environmental risk, and since these recommendations were proposed in 2018 a robust regulatory regime to manage risks of the onshore gas industry has been established.

Government must be able to adapt its regimes to regulate, as new technology, systems and information becomes available. It is this Government's view, that it is timely to review the requirements for third party merits review for onshore gas to ensure that industry is provided the certainty it needs to invest in the Territory.

Q. Is this the first step in removing all the recommendations of the HFI?

A. A move away from recommendation 14.24 does not mean that this Government does not support a robust, safe and well-regulated onshore gas industry. We just recognise that this recommendation is not concerned with ongoing safety of the industry and is in fact damaging to the economic prospects of the NT.

Q. Why are these changes only affecting some of the environment and development legislation?

A. Merits review provisions apply inconsistently across NT environment, planning and resource legislation. The NT's primary environmental legislation, the *Environment Protection Act 2019*, provides for the environmental impact assessment and approval of projects with the potential to have a significant impact on the environment. A Ministerial decision to grant an environmental approval under this Act for a project with the highest risks to the environment is not open to merits review by third parties.

Similarly, third party merits review is not available to decisions to grant a licence to manage environmental impacts from mining activity in the Territory. This Bill will mean merits review provisions apply consistently across industry, including onshore gas, mining, agriculture and development.

There is no reason why some industries or development activities should be subject to third party merits review and others not.

Q. What about pastoralists, will this Bill affect pastoral activities?

A. The legislative requirements in relation to private agreements between pastoralists and petroleum interests still apply.

For pastoral interests, there are private legislated agreements negotiated through the land access arrangements administered by Department of Mining and Energy under the *Petroleum Regulations 2020*. These private agreements establish a direct relationship between pastoralists and gas companies, allowing discussions about development and compensation to flow between the parties.

Q. Will interested observers be able to provide input into applications or management plans?

A. Yes, stakeholders and interested parties may still make submissions on applications for permits, planning applications, water licences and petroleum environment management plans where the legislation provides with these submissions required to be considered by decision makers.

Opportunities for input into environmental impact assessment and environmental approval processes are not affected by the amendments.

The right to judicial review by the NT Supreme Court continues to apply.

Q. What about Native Title holders, Traditional Owners and Land Councils – how does this affect them?

Existing legislation provides for a private agreement with Native Title holders and Traditional Owners to be in place for every granted petroleum exploration permit in the Territory.

These private agreements set up a direct relationship between Aboriginal people and gas companies, ensuring that Aboriginal people and their representatives (often land councils) have a direct line of communication to the gas company.

The amendments do not affect these laws.

Q. What if both pastoralists and Aboriginal people are against a proposal?

In the event onshore gas development is occurring in a way that is not agreed to by either pastoralists or Aboriginal people, these private agreements operate as a forum for these stakeholders to raise concerns with gas companies directly.

Third parties also retain the common law right of judicial review in the Supreme Court.

Q. When does the Bill become law?

The Amendment Bill will commence the day after the day on which the Administrator provides assent, or formal approval.

Q. What happens then to merits review already in progress?

The Bill does not apply retrospectively. Any merits review underway prior to commencement of the Amendment Bill will not be impacted by the amendments proposed in this Bill and must run their course.

Further Information

More information about the Bill can be found at [Environmental regulatory reform latest news | Department of Lands, Planning and Environment](#)