

25th June 2017

By email:

environment.policy@nt.gov.au



Environment
Institute of
Australia and
New Zealand

Dear Sir/Madam,

Re: Submission to the *Environmental Regulatory Reform Discussion Paper*

The Environment Institute of Australia and New Zealand (EIANZ) Northern Territory Division welcomes the opportunity to submit its comments on the *Environmental Regulatory Reform Discussion Paper* (discussion paper).

The EIANZ represents environmental practitioners across Australia and New Zealand and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent environmental practice. Its members work across the environmental industry for government, industry and consultancy.

EIANZ members may also attain accreditation as 'Certified Environmental Professionals' (CEnvP). A CEnvP accreditation is a recognition by industry peers of competent and ethical practice. The CEnvP program is analogous to certification programs for accountants (ie Certified Practising Accountant) .

Working with environment policy and legislation is core business for EIANZ members, consequently EIANZ NT has long been involved in environmental policy reform in the NT, last year we have made submissions to:

- Northern Territory Balanced Environment Strategy Discussion Draft, March 2016
- Comment on the NT EPA's Draft advice - Response to Dr Hawke's review, October 2016
- Comment on Draft Petroleum (Environment) Regulations, April 2016

Our response to this discussion paper is divided into two sections. Firstly, we make some high level general comments about the paper its intent and potential application. Secondly, we respond to specific sections in the discussion paper.

General statements

Firstly, thank you for a concise document that lays out the challenges of the current process and, from previous community input, some possible options to resolve some of these issues. We like the thematic approach way and the 'what we are considering' as a way to inform the community of the status of thoughts.

The reform process has been lengthy (as outlined in the discussion paper introduction), is it possible to get a timeline for the reforms and the extent of the reforms? For instance, the page 3 outlines the stages of this reform and the website gives phases within each stage but there are no indicative timelines.



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As Stage 1 of the proposed reform will require other legislation to be amended it would be useful, even at a broad level, to outline which legislation and what the amendment might be.

While acknowledging that this is a discussion paper we feel that a lack of detail around some critical issues (particularly determining significance of impact) makes it difficult for us to join-the-dots for some aspects of the proposed assessment process.

Because of this we feel that a series of workshops might resolve some of these issues and give the reform group an opportunity to explain and 'test' their ideas across the community of people working with environmental legislation.

Specific responses

The document variously uses the terms development, project and action. We'd recommend that a single term is used.

Page 6-table 3rd row right hand cell *Territory Environmental Objectives will identify matters of importance to the Territory.*

As the level of assessment and compliance is dependent on the TEO it would be good to have some examples to understand what is proposed. We interpret the TEO to be not unlike objectives provided in EIS Terms of Reference but with specific trigger values to assess the significance of impact.

Page 9-need better defined triggers.

We agree and look forward to further detail around these. Other jurisdictions have trigger values for a suite of parameters that, when exceeded, influence level of assessment or management requirements.

Page 9- *What we are considering.*

There is a list of matters at the end of the 1st paragraph. We think that noise should be added here.

Page 10 point 3. *'...whether a development proposal poses risk...'*

The proposal doesn't pose a risk a proposed development does.

Page 10 last para.

Could you give an example of specific developments that will require an environmental approval.

Page 11. *What we are considering.*

We wonder if there is an assessment through preliminary information? For example, a proponent may supply an NOI (or equivalent) to the NT EPA, the NT EPA may conclude that no further assessment is required. We would also have thought that as the self-assessment is being supplied to the NT EPA that this should appear in this section. We are a bit uncomfortable with the *Assessment Through Supplementary Information* title. Would *Assessment Through Additional Information* be better so as to avoid confusion with the supplementary EIS phase?

Page 11. *Environmental Impact Statement.*

We think that this process could also be triggered by small projects depending on where and what they are. We need more detail around if the proponent elects to do an EIS how this would streamline the process.

Page 13. *What we are considering. One of the advantages of establishing the framework of TEOs...*

We think this is the current model, at least for EIS ToR, there are a standard existing suite of values that need to be considered when determining potential impact. What we currently lack for many objectives is triggers for significance.

Page 13 *Questions to consider: quality of information.*

We would have thought that if the information is insufficient then the project could not be fully assessed ie no approval given until data gaps are filled. However, there seems to be a perception that complete baseline data is required to assess potential impacts, this is not always the case; if a project (due to, for instance, its location or its nature) cannot impact a value then these values may not require baseline data. A better question here may be how to ensure that impacts are robustly assessed to the satisfaction of all parties.

Page 15.

We agree for the need of public input and scrutiny of the approvals process. In some stages of the approvals process this should be just information, in other stages it should be community input. We applaud the suggestion that referrals should be publicly available but question the need for public input at this stage (first cell of table). The current process (and the proposed TEO) give the framework to assess level of risk and hence level of assessment.

Page 15. Last para *It should not be assumed that the additional steps for public participation will add to EIA timeframes.*

We support legislating the timeframe for assessment but we are unsure how the extra steps for public participation would not extend the existing timeframes for assessment.

To resolve this, we'd like to see the assessment process mapped out showing time frames.

Page 17, 3rd para. *It has been highlighted that there is a need for public criteria which must be considered before issuing an approval.*

We are unsure of the what the meaning of public criteria is here.

Page 17, 4th para. *The accountability of the Minister, government agencies and the NT EPA has been raised and it has previously been suggested the process introduce accountability mechanisms for consultants undertaking EIA work.*

EIANZ runs a national certification program for environmental professionals called the Certified Environmental Practitioner (CEnvP) scheme. As an example, the CEnvP scheme is analogous to the Certified Practising Accountants scheme.

The CEnvP scheme is Australasia's first accreditation scheme designed exclusively for environmental practitioners, and is growing on average at 25 per cent each year. Certification is open to experienced practitioners who have a minimum of five years relevant work experience and fulfil the set criteria.

Page 17. *What are we considering?*

The idea of removing discretion from decision making is attractive. However, the process must, by necessity, be discretionary as it is unlikely that the schedule of development types (and variations within a development type) and the consistent application of TEO will occur. We believe there is opportunity to define some development types and some locations of development (such as, by way of example, the Howard Springs Sand Plains) that must have environmental assessment. However, we agree that clearly and consistently defined TEO and good review processes will remove much of the discretion.

Page 18. *What we are considering*

Point 1. As with the words action, project and development it is important to standardise terminology. The word referral has previously been used when the proponent to submit a project to the NT EPA for consideration. We think what is being called a referral here should be called something else to avoid

confusion ie a referral is the initial notification, the community asking if a project has been referred appears to be different.

Page 19. Last para. *Another way.....*

We would think that a properly managed compliance program should negate the need for stakeholders to seek an injunction if works are not in compliance with the approval.

Page 19. Questions to consider

Third-party injunctions

Would need to see some more detail to ensure that vexatious or frivolous injunctions are managed.

Page 20. *Introducing review processes*

We support the need for a transparent and defensible process which must contain the opportunity for a right to appeal. We'd like to see some further detail around how vexatious or frivolous injunctions are managed.

Page 22. 1st column, last para, 3rd sentence. *Such considerations will be addressed through the second stage of the environmental reform process.*

Surely, the reform stated here must happen in the 1st Stage?

Page 22. *What we are considering.*

On face value, it would appear that Option 1 seems to fulfil the reform's requirements. We support compliance being a role NT EPA, however, the departmental staff are public servants working for a government department which brings into question the perception of independence of their decisions.

Page 23. *Offsets*

Offsets are well recognised part of the mitigation hierarchy, though recent reviews have identified some problems with an offsetting regime. For example, May et al. (2017) found that only 39% of offsets in Western Australia had an 'outcome that can be considered effective'. This is mentioned only to ensure that offsetting is not considered a panacea and that recent publications have identified both challenges and opportunities to improve offsetting.

[May, J, Hobbs, RJ & Valentine, LE 2017, 'Are offsets effective? An evaluation of recent environmental offsets in Western Australia' Biological Conservation, vol 206, pp. 249-257. DOI: 10.1016/j.biocon.2016.11.038, 10.1016/j.biocon.2016.11.038]

Figure 2.

We acknowledge updated Figure 2.

Box upper left *Proponent undertakes self-assessment*

Besides those proposed actions likely to have a significant impact on a TEO, we would have thought that specific developments (page 10 of the discussion paper) would be flagged here also.

Box *High Risk Assessment by EIS*

It appears that the only way to exit this box is as an unacceptable action. Another arrow leading to recommends approvals and conditions will resolve this.

Again, we thank you for the opportunity to be engaged in the environmental regulatory reform process and look forward to further opportunities to contribute to this important reform.

Yours Sincerely,



Jeff Richardson
President, Northern Territory Division
Environment Institute of Australia and New Zealand

