

Legal Alert

Commercial

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New Environment Protection Act for the Northern Territory

In a Nutshell

The *Environment Protection Act 2019* (NT) has now been granted assent. When it comes into effect, it will introduce significant changes to the Territory's existing environment protection regime that will require project developers to go through environmental impact assessments and obtain Ministerial approvals for certain proposed actions. The Act represents a shift towards a more modern and substantive environmental assessment and approval regime.

Introduction

In the first stage of the Northern Territory's two-stage environment protection regime overhaul, the new *Environment Protection Act 2019* (NT) has passed through Parliament and been granted assent.

The Act seeks to modernise the Northern Territory's environmental impact assessment and approval system to ensure that projects that have a significant impact on the environment are subject to appropriate assessment and approval processes.

The key aspects of the new scheme are:

- an impact assessment system that will apply to projects that may have significant impact on the environment; and
- an approval system involving consideration of specific matters to ensure that the environmental impacts of those significant impact projects are properly managed.

The new Act will repeal and replace the Environment Assessment Act 1982, which has been in effect since 1984.

While the Act received assent on 9 October 2019, the date for commencement has not yet been set and so the new requirements are not yet in effect.

The NT Government has indicated that it intends to undertake further public consultation on draft regulations to support to the administration and enforcement of the Act.

New Objectives

The Act provides a suite of new objectives to protect the environment of the NT. The new objectives aim to:

- promote ecologically sustainable development so that the wellbeing of the people of the Territory is maintained or improved without adverse impact on the environment;
- recognise the role of environmental impact assessments and approvals in promoting the protection and management of the environment;
- provide for broad community involvement during the process of environmental approval; and
- recognise the role that Aboriginal people have as stewards of their country, and the importance of participation by Aboriginal people and communities in environmental decision-making processes.

New Environmental Impact Assessment

The Act sets out a process by which a proposed action may be directed into the environmental impact assessment process. Proposed actions that have the potential to significantly impact on the environment are required to be assessed by the Northern Territory Environment Protection Authority (**NT EPA**).

'Significant impact' is defined as an impact of major consequence having regard to the context and intensity of the impact, the sensitivity, value and quality of the environment impacted on, and the duration, magnitude and geographic extent of the impact.

A proposed action that meets an activity-based or location-based referral trigger is also required to be assessed by the NT EPA. Activity-based triggers are linked to actions that the Minister for Environment and Natural Resources ('the Minister') considers are likely to have a significant impact on the environment, while location-based triggers are linked to areas that the Minister considers are of significance due to a feature of the natural or cultural environment that are likely to be subject to significant impact by proposed actions.

The environmental impact assessment process will require proponents to:

- provide affected communities with information and consultation opportunities;
- consult with affected communities in a culturally appropriate manner;
- seek and document community knowledge and understanding of the natural and cultural values of areas that may be impacted;
- address Aboriginal values and the rights and interests of Aboriginal communities in relation to areas that may be impacted; and
- in the design of the proposed action:
 - consider the principles of ecologically sustainable development;
 - apply the environmental decision-making hierarchy; and
 - consider the waste management hierarchy.

The Act also includes some notable and forward-thinking additions:

- the Act seeks to ensure that actions will not have an 'unacceptable impact on the environment, *now or in the future*'; and
- 'the impact of a changing climate' is to be taken into account when planning, assessing and carrying out proposed actions.

New Environmental Approval

At the conclusion of the environmental impact assessment process, a proponent is required to gain environmental approval from the Minister before the proposed action can be undertaken.

In addition to a number of other considerations, in deciding whether to grant or refuse an environmental approval, the Minister must have regard to:

- the objectives of the Act discussed above;

- the assessment report on the action;
- whether the proponent is a fit and proper person to hold an environmental approval; and
- any other matters the Minister considers relevant.

Other New Frameworks

The Act also provides for the establishment of other new frameworks, including an environmental offsets framework, and financial provisions that create an economic incentive to ensure no significant environmental impact is caused by activities.

Existing Assessments and Approvals

Transitional provisions are included in the Act. These provisions provide how assessment and approvals are treated in circumstances where, under the Environment Assessment Act 1982, the assessment process is pending, has commenced or is completed.

Contact details

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