

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY ACT 2012

As in force at 1 January 2013

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 January 2013. Any amendments that commence after that date are not included.

NORTHERN TERRITORY ENVIRONMENT PROTECTION AUTHORITY ACT 2012

An Act to establish the Northern Territory Environment Protection Authority,
and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Northern Territory Environment Protection Authority Act 2012*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

advise includes make a recommendation.

appointed member means a member appointed under section 10(1)(a).

chairperson means the person appointed to be chairperson of the NT EPA under section 11(1).

ecologically sustainable development means using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life now and in the future can be increased.

environment means all aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects.

member means a member of the NT EPA mentioned in section 10(1).

NT EPA means the Northern Territory Environment Protection Authority established by section 6.

Planning Commission means the Planning Commission established by section 81A of the *Planning Act*.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Northern Territory Environment Protection Authority

Division 1 Establishment

6 NT EPA established

- (1) The Northern Territory Environment Protection Authority is established.
- (2) The NT EPA:
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) is capable, in its corporate name, of:
 - (i) acquiring, holding and disposing of real (including leasehold) and personal property; and
 - (ii) suing and being sued; and

(iii) entering into contracts.

- (3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the NT EPA affixed to a document and are to assume that it was duly affixed.

Division 2 Objectives, functions and powers of NT EPA

7 Objectives

The objectives of the NT EPA are the following:

- (a) to promote ecologically sustainable development;
- (b) to protect the environment, having regard to the need to enable ecologically sustainable development;
- (c) to promote effective waste management and waste minimisation strategies;
- (d) to enhance community and business confidence in the environmental protection regime of the Territory.

8 Functions and powers

- (1) The functions of the NT EPA are:
- (a) to advise and report to the Minister under Part 3; and
 - (b) to undertake functions associated with environmental assessments and the management of waste and pollution conferred on the NT EPA under this or any other Act; and
 - (c) to perform any other functions conferred on it by this or any other Act.
- (2) The NT EPA has the powers necessary or convenient to perform its functions.
- (3) In exercising its powers and performing its functions, the NT EPA must:
- (a) encourage community involvement and engagement; and
 - (b) ensure transparent processes and provide certainty to business.
- (4) In addition, the NT EPA must integrate both long-term and short-term economic, environmental and social equity considerations in its decision making.

9 Independence

- (1) The NT EPA is not subject to the direction or control of the Minister in the exercise of its powers or the performance of its functions.
- (2) A member is not subject to the direction or control of the Minister in the exercise of the member's powers or the performance of the member's functions.

Division 3 Constitution and membership

10 Membership

- (1) The NT EPA consists of the following members:
 - (a) 5 members appointed by the Administrator by *Gazette* notice;
 - (b) the Chairperson of the Planning Commission.
- (2) The Administrator may appoint a person to be a member under subsection (1)(a) only if:
 - (a) the person is not a public sector employee; and
 - (b) the Administrator is satisfied that the person has skills, knowledge and experience in one or more of the following areas:
 - (i) environmental science;
 - (ii) environmental and natural resource management;
 - (iii) waste management and pollution control;
 - (iv) economic analysis;
 - (v) social analysis;
 - (vi) business;
 - (vii) environmental law;
 - (viii) management in a regulatory field.
- (3) Before appointing a person to be a member, the Administrator:
 - (a) may have regard to the person's skills, knowledge or experience relating to one or more of the following:
 - (i) regional areas and issues;

- (ii) indigenous issues;
 - (iii) working with the community; and
- (b) must have regard to the range and level of skills, knowledge and experience required among the members of the NT EPA to enable it to exercise its powers and perform its functions effectively.

11 Chairperson

- (1) The Administrator must appoint one of the appointed members to be the chairperson of the NT EPA.
- (2) The Administrator may terminate the person's appointment as the chairperson without terminating the person's appointment as a member.
- (3) The Minister may appoint another of the members to act in the office of chairperson:
 - (a) during a vacancy in the office; or
 - (b) during a period when the chairperson is unable to perform the duties of the office.
- (4) However, the Minister may only appoint a person under subsection (3):
 - (a) for a single period not exceeding 6 months; or
 - (b) for consecutive periods totalling not more than 6 months.

12 Duration of appointment

- (1) An appointed member holds office:
 - (a) for 3 years or the shorter period specified in the instrument of appointment; and
 - (b) on the conditions determined by the Administrator.
- (2) The member is eligible for reappointment.

13 Leave of absence

The NT EPA may grant a member leave of absence on conditions determined by the NT EPA.

14 Vacation of office

- (1) A person who is an appointed member ceases to be a member if:
 - (a) the person resigns by giving written notice to the Administrator; or
 - (b) the person's term of office comes to an end and the person is not reappointed; or
 - (c) the person is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (d) the person becomes a public sector employee; or
 - (e) the person's appointment is terminated under section 15.
- (2) The exercise of a power or the performance of a function by the NT EPA is not affected only by a vacancy in its membership.

15 Termination of appointment

- (1) The Administrator may terminate the appointment of a person who is an appointed member:
 - (a) on the ground of misbehaviour or misconduct; or
 - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
 - (c) if the Administrator is satisfied the person has failed to comply with section 22; or
 - (d) if the person is absent from 3 consecutive meetings of the NT EPA without leave granted under section 13; or
 - (e) if the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a member; or
 - (f) if the person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.
- (2) A termination of appointment must be made in writing.

(3) In this section:

misconduct includes failing to exercise powers or perform functions, or otherwise act, in accordance with the objectives of the NT EPA.

Division 4 Procedures of NT EPA

16 Procedures

Subject to this Act, the NT EPA may determine its own procedures.

17 Meetings

- (1) The chairperson may convene a meeting of the NT EPA at any time.
- (2) However, the chairperson must convene a meeting of the NT EPA:
 - (a) at least 4 times each year; and
 - (b) when requested by another member to do so.
- (3) A meeting convened under subsection (2)(b) must be held on, or as soon as practicable after, the meeting date requested by the member (which must be at least 7 days after the request is made).

18 Quorum at meetings

Subject to section 23(1)(c), the quorum for a meeting of the NT EPA is a majority of members.

19 Presiding member at meetings

A meeting of the NT EPA must be presided over by:

- (a) the chairperson; or
- (b) in the absence of the chairperson, another member elected by the members present at the meeting.

20 Voting at meetings

- (1) A decision at a meeting of the NT EPA must be determined by the majority vote of members present and voting.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote.

21 Records of meetings

The NT EPA must keep accurate records of its meetings.

22 Disclosure of interest

- (1) This section applies if a member has a personal interest in a matter being considered, or about to be considered, by the NT EPA.
- (2) The member must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:
 - (a) the nature and extent of the interest;
 - (b) how the interest relates to the matter mentioned in subsection (1).
- (3) If the relevant facts come to the member's knowledge at a time when the NT EPA is not meeting, the member must:
 - (a) make the disclosure mentioned in subsection (2) by written notice to each other member; and
 - (b) table a copy of the notice at the next meeting of the NT EPA.
- (4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (6) For this section, a member has a personal interest in a matter if the member:
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

23 Effect of personal interest

- (1) If a member has a personal interest in a matter that is required to be disclosed under section 22:
 - (a) the member must not take part in any deliberation or decision of the NT EPA about the matter; and

- (b) the member must be disregarded for the purpose of constituting the quorum of the NT EPA for the deliberation or decision; and
 - (c) the quorum for the deliberation or decision is a majority of members entitled to participate in the deliberation or decision.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the NT EPA about the matter.

24 Limitation on challenge to decision of member

- (1) This section applies if a person who is a member of the NT EPA:
 - (a) takes part in any deliberation or decision of the Planning Commission about a matter; and
 - (b) takes part in any decision of the NT EPA under this or another Act in relation to the same matter (a *relevant decision*).
- (2) A relevant decision must not be challenged, appealed against, quashed or called into question in any court or tribunal merely because the person took part in the Planning Commission's deliberation or decision.
- (3) A reference in this section to a relevant decision includes a reference to any of the following:
 - (a) an assessment or report;
 - (b) an opinion, advice or recommendation;
 - (c) a decision about licensing or compliance.

Part 3 Advice and reports of NT EPA

25 Advice of NT EPA

- (1) The NT EPA must, at the request of the Minister, advise the Minister about any of the following matters:
 - (a) achieving appropriate and effective environmental policy and management for the Territory;
 - (b) legislation related to the environment and its administration;
 - (c) issues affecting the Territory's capacity to achieve ecologically sustainable development;

- (d) emerging environmental issues;
 - (e) the cumulative impacts of development on the environment;
 - (f) any other matter related to the objectives of the NT EPA.
- (2) In addition, the NT EPA may, on its own initiative, advise the Minister about any of the matters mentioned in subsection (1).

26 Consultation and matters for consideration

In performing its functions under section 25, the NT EPA may have regard to the following:

- (a) the need to adopt objectives, targets and standards for environmental management that are:
 - (i) soundly and scientifically based; and
 - (ii) consistent with best practices;
- (b) the need to consider:
 - (i) the global dimension of environmental impacts of actions and policies; and
 - (ii) regional variations in the environment;
- (c) the need to develop a strong, growing and diversified economy and a well-informed and engaged private sector that can enhance the capacity for protection of the environment;
- (d) the need to maintain and enhance international competitiveness in an environmentally sound way;
- (e) the need to adopt cost effective and flexible policy instruments, including, for example, improved valuation, pricing and incentive mechanisms;
- (f) government economic policies and priorities for the Territory;
- (g) any other matters the NT EPA considers relevant.

27 Response to advice

- (1) If the NT EPA gives advice to the Minister under section 25, the Minister must, as soon as practicable, but within 6 months, after receiving the advice:
- (a) give the NT EPA a written response to the advice; and

- (b) if the Minister has not followed, and does not intend to follow, the advice – include in the response reasons why the Minister has not followed, and does not intend to follow, the advice.
- (2) The NT EPA may make copies of the written response available to the public in the way it considers appropriate.
- (3) However, the NT EPA must withhold from the public information of a commercially confidential nature.

28 Environmental quality reports

- (1) The NT EPA must, at the request of the Minister, inquire into and report to the Minister on any aspect of environmental quality in the Territory.
- (2) In addition, the NT EPA may, on its own initiative, inquire into and report to the Minister on any aspect of environmental quality in the Territory.

29 Availability of advice and reports

- (1) After the NT EPA gives advice or a report to the Minister under this Part, it must make copies of the advice or report available to the public in the way it considers appropriate.
- (2) However, the NT EPA:
 - (a) must withhold from the public information of a commercially confidential nature; and
 - (b) may withhold other information from the public if it is satisfied there are reasonable grounds for doing so.
- (3) In addition, before making the advice or report available to the public, the NT EPA must give the Minister reasonable notice of its intention to do so.
- (4) The Minister must table a copy of the advice or report (excluding information of a commercially confidential nature) in the Legislative Assembly within 6 sitting days after receiving it.
- (5) This section does not apply if the advice or report is of an administrative or preliminary nature.

30 Conduct of inquiries

- (1) In exercising its powers and performing its functions under this Part, the NT EPA may:
 - (a) conduct the inquiries it considers appropriate; and
 - (b) ask a person with special knowledge or experience relevant to a particular inquiry to help it conduct the inquiry.
- (2) For subsection (1)(a), the NT EPA may, by written notice, require a person to give it relevant information within the reasonable period stated in the notice.
- (3) The person commits an offence if the person engages in conduct that results in the contravention of the notice.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.
- (6) An individual is not excused from giving information under subsection (2) on the ground that the information may tend to incriminate the individual or expose the individual to a penalty.
- (7) However, information provided by an individual is not admissible as evidence against the individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the information.

Part 4 Offences**31 Misleading information or document**

- (1) A person commits an offence if:
 - (a) the person gives information to the NT EPA under this Act; and
 - (b) the person knows the information is misleading.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if:
 - (a) the person gives a document to the NT EPA under this Act; and

- (b) the person knows the document contains misleading information.

Maximum penalty: 200 penalty units.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the attention of the NT EPA; and

- (b) to the extent to which the person can reasonably do so – gives the NT EPA the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

32 Confidentiality of information

- (1) A person commits an offence if the person:

- (a) obtains information while exercising a power or performing a function as a member; and

- (b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the person discloses the information:

- (a) for the exercise of the person's powers or the performance of the person's functions as a member; or

- (b) with the consent of the person to whom the information relates; or

- (c) for legal proceedings arising out of the operation of this Act.

- (3) A person commits an offence if the person:

- (a) obtains information while acting on behalf of, or performing duties for, the NT EPA under this Act; and

- (b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (4) Subsection (3) does not apply if the person discloses the information:

- (a) for the administration of this Act; or
- (b) with the consent of the person to whom the information relates; or
- (c) for legal proceedings arising out of the operation of this Act.

- (5) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Note for section 32

In addition, under section 43BE of the Criminal Code, a person is not criminally responsible for conduct constituting an offence if the conduct is justified or excused by law.

Part 5 Administrative matters

33 Annual report

- (1) The chairperson must prepare and give to the Minister a report on the performance by the NT EPA of its functions during each financial year.
- (2) The report must be given to the Minister by 31 October following the end of the financial year.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

34 Guidelines

- (1) The NT EPA may make guidelines about its administrative practices and procedures.
- (2) Without limiting subsection (1), the guidelines may provide for dealing with culturally sensitive or commercial information.

- (3) The guidelines must not be inconsistent with this Act.

35 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a member.
- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the NT EPA in good faith in the exercise of a power or performance of a function under this or another Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory would, apart from those subsections, have for the act or omission.
- (4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

36 Delegation

- (1) The NT EPA may delegate any of its powers and functions under this or any other Act to:
- (a) a member; or
 - (b) a public sector employee; or
 - (c) a Chief Executive Officer.
- (2) In this section:

Chief Executive Officer, see section 3 of the *Public Sector Employment and Management Act*.

37 Staff and facilities for NT EPA

- (1) The Chief Executive Officer must provide the NT EPA with staff and facilities to enable it to properly exercise its powers and perform its functions.
- (2) A staff member provided to the NT EPA under subsection (1) is subject only to the direction of the chairperson in the performance of his or her duties for the NT EPA.

38 Regulations

The Administrator may make regulations under this Act.

Part 6 Repeals and transitional matters for Northern Territory Environment Protection Authority Act 2012

Division 1 Repeals

39 Repeal

The following Acts are repealed:

- (a) *Environment Protection Authority Act 2007* (Act No. 24 of 2007);
- (b) *Environment Protection Authority Amendment Act 2010* (Act No. 5 of 2010).

Division 2 Transitional matters

40 Definitions

In this Division:

commencement day means the day on which section 39 commences.

41 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of this Act; or
 - (b) to otherwise allow or facilitate the transition to the operation of this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expires 1 year after the commencement day.

42 Transitional regulations under other Act

- (1) This section applies if this Act does not make provision, or sufficient provision, for the transition from the operation of another Act as in force immediately before the commencement day to the Act as amended by this Act.
- (2) The power under the other Act to make regulations is taken to include the power to make a regulation of a transitional nature to facilitate the transition as mentioned in subsection (1).
- (3) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing a new liability on the person.
- (5) The regulation must declare it is for the transition as mentioned in subsection (1).
- (6) This section, and each regulation made because of this section, expires 1 year after the commencement day.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Northern Territory Environment Protection Authority Act 2012 (Act No. 28, 2012)

Assent date	6 December 2012
Commenced	1 January 2013 (<i>Gaz</i> S82, 21 December 2012)

3 LIST OF AMENDMENTS

pt 7 hdg	exp No. 28, 2012, s 58
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div 1 hdg	exp No. 28, 2012, s 58
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