

Northern Territory: The view from the top (background paper), by Jane Munday

The Northern Territory (NT) covers one-sixth of Australia but has fewer than 250,000 people¹. Despite this, the Northern Territory has hosted some of the country's more contentious impact assessment challenges – from uranium mining in the 1970s to onshore gas development and hydraulic fracturing in 2019. Nearly one-third of our people are Aboriginal. Most development is on either Aboriginal freehold land or seas covered by *Aboriginal Land Rights Act 1976* or subject to the *Native Title Act 1993*. Aboriginal land is also covered by the *Sacred Sites Act 1989*.

Current key legislation affecting impact assessment

Commonwealth	Northern Territory (NT)	Associated NT legislation
	1982 <i>Environmental Assessment Act</i> (Administrative Procedures 1984)	NT Self-Government 1978 Petroleum Act (1984)
Ecologically Sustainable Development (ESD) Principles 1992 1999 Environment Protection and Biodiversity Conservation (EPBC) Act	1994 EA administrative procedures	Petroleum Regulations (1994) <i>Water Act</i> and Regulations (1992) <i>Waste Management and Pollution Control Act</i> (1998)
	2012 <i>Environment Protection Authority Act</i> Independent regulator for environmental assessment, waste management and pollution control, beverage containers and plastic bags, parts of the <i>Water Act</i> (discharge). Policy in departments of Environment and Chief Minister	<i>Mining Management Act</i> and Regulations (2001) Petroleum (Environment) Regulations (2016) (Environmental Management Plans, drilling, hydraulic fracturing, seismic, civil work) <i>Beverage Containers and Plastic Bags Act</i> 2011
	2018 EPA Act Amendments (to increase size of the board to bring on hydraulic fracturing expertise)	Amendments to <i>Water Act</i> (now covers mining and oil and gas) Amendments to <i>Petroleum Act 1984</i> and Petroleum (Environment) Regulations 2016.

Legislative reforms

Australian Government	Northern Territory environment	Northern Territory (other)
1974 Environment Protection and Impact of Proposals Act	Under Commonwealth control, first Environmental Impact Study was for Ranger Uranium Mine 1974	<i>Aboriginal Land Rights Act 1976</i>
	1982 Environmental Assessment (EA) Act	<i>Mining Act 1984, Petroleum Act 1984 Sacred Sites Act 1989</i>
1992 ESD Principles 1999 EPBC Act	1994 <i>EA Act</i> Administrative Procedures in line with ESD Principles	<i>Water Act 1992 Native Title Act 1993</i>
<p>Bilateral agreement (2002): Australian Government Minister for Environment approval needed for matters of national environmental significance (nuclear, wetlands, world heritage, migratory species, Commonwealth marine areas), strategic assessments.</p> <p>2009 Dr Allan Hawke Review of <i>EPBC Act</i> (a chapter on participation)</p> <p>Australian Government commits to United Nations Declaration on the Rights of Indigenous People (UNDRIP) 2007, Sustainable Development Goals 2015 (SDGs)</p>	<p>2006 Interim Environment Protection Authority (EPA)</p> <p>2008 EPA (Board of four, advisory role, review of legislation, policy, inquiries)</p> <p>2008 EPA consultation, 2009 discussion paper on reform of EA Act</p> <p>2009 Batchelor Institute paper on Indigenous engagement in EA</p> <p>2010 Final discussion paper</p> <p>2012 Moratorium on seabed mining (extended 2015, 2018, still no report)</p> <p>2012 New Government (CLP)</p> <p>2012 Independent EPA established with regulatory role</p> <p>2015 Dr Allan Hawke review of <i>EA Act</i></p> <p>2016 EPA Reply to Hawke recommendations</p> <p>New Government, change of EPA Chair and Board</p> <p>2017 Roadmap to Reform discussion paper (Department of Environment and Natural Resources)</p> <p>2018 Discussion paper, consultation, Draft Environment Protection Bill and Regulations: to streamline, defined time periods, four levels of assessment (supplementary information, Environmental Impact Study, public inquiry, strategic assessment). All environmental approvals by Minister for the Environment.</p>	<p>2012 Dr Tina Hunter review of petroleum regulations;</p> <p>2014 Dr Allan Hawke hydraulic fracturing review</p> <p>2016 Petroleum (Environment) Regulations</p> <p>2016 Dr Hunter review of Regulations</p> <p>2016 New Labor Government (produces Economic Framework in 2017)</p> <p>2016 moratorium on onshore shale gas exploration and production, 2017</p> <p>Independent Scientific Inquiry into Onshore Hydraulic Fracturing in the Northern Territory (Justice Pepper)</p> <p>2018 Pepper report, with 135 recommendations, all accepted, implementation team established in the Department of the Chief Minister.</p>
2019 Review of EPBC Act due	Environment Protection Bill 2019 tabled in May 2019 (Regulations to come). Still under review: seabed mining, Mining Act, waste transport, social impact assessment policy, climate change, offsets, adaptive management, waste management and pollution control etc.	Late 2018-19 Amended Petroleum (Environment) Regulations 2016, <i>Petroleum Act 1984</i> and <i>Water Act</i> . Implementing fracking recommendations. Strategic Regional Environment and Baseline Assessment (SREBA)

Defining away the people

Policy, reforms, legislation	Language
EPIP 1974 (environment protection, impact of proposals)	"environment" includes all aspects of the surroundings of man , whether affecting him as an individual or in his social groupings , and "environmental" has a corresponding meaning"
Rio Declaration 1992	Principle 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature ; Principle 3: the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.
ESD Principles 1992	"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"; should integrate short and long-term social, economic and equitable considerations."
EPBC 1999 (environment protection and biodiversity conservation)	"ecosystems and their constituent parts, including people and communities ; natural and physical resources; qualities and characteristics of locations, places and areas; heritage value of places; the social, economic and cultural aspects of above", definition " inclusive of the natural, economic, social and cultural environments "
NT Mining (1984) and Petroleum (1984) Acts	"the wellbeing of humans , structures made or modified by humans, the amenity values of an area and economic, cultural and social conditions "
EA Act 1982 (amended 1994)	"all aspects of the surroundings of man (humans in 2019 <i>EA Bill</i>), including physical, biological, economic, cultural and social aspects "
2008 NT reforms discussion papers	As well as aligning with ESD Principles, EPA and Batchelor papers evaluated against IAIA principles of best practice, recognition of UN Declaration of the Rights of Indigenous Peoples. Environmental assessment is a pre-decision planning tool, a systematic approach for identifying, predicting and evaluating the potential environmental, social and economic impacts/benefits of a proposed action
2008 NTEPA vision	A prosperous Northern Territory where the natural, cultural and social environments are cared for, valued and respected.
2018-20 NTEPA purpose	"To ensure environmental assets are used sustainably and protected for the benefit of current and future generations" – "assesses the environmental impacts of development proposals".
Environment Protection Bill 2019	Retains the 1982 EA Act definition. Environment Protection Bill tabled May 2019. Improved consideration of the general duty of proponents to consult and address Aboriginal values and rights from the consultation draft circulated in 2018. Awaiting Regulations and policies for detail on social and cultural impact assessment.

'Surroundings' and 'aspects' are often confined to amenity impacts such as noise, dust, smells and pollution. The Western Australia *Environment Protection Act 1986* confines social impacts to those linked to biophysical impacts (see 2016 EPA guidance note), rather than specifically referring to the 'natural and human environments'.

Positives

- NT Government wants to streamline the assessment process with contemporary legislation, including defined timelines, although this has proved a protracted and challenging process
- pressure with onshore shale gas development to develop a rigorous regulatory regime and implement all recommendations of the inquiry
- the Hydraulic Fracturing Inquiry's recommendations include a strategic regional baseline environmental assessment (SREBA) of the Beetaloo Basin, coordinated by CSIRO and an implementation team in the Department of the Chief Minister (DCM), including technical guidance notes
- working on a social, cultural and economic guidance note for the SREBA, a glimmer of hope to improve the Territory's policy and practice in this area.

Negatives

From my PhD research on the quality dimensions of impact assessment, as well as an audit of 150 studies done in the NT since 1974:

- participation was seen in key informant interviews as the most important dimension of quality, but poorly done
- the second most important dimension was efficiency but a major gap with perceptions of the actual system (studies and assessment): bureaucratic, costly, not risk focussed, poor process, ballooning of studies that are no better at addressing material issues, lack of capacity and under-resourced
- stuck in the 1990s, paradigm of environmental protection and conservation, tinkering at the edges not keeping pace with community expectations
- system not seen as transparent or accountable
- community distrust of both government and companies, legacy projects
- little continuity from assessment to monitoring and management, little to ensure proponents stick to their social commitments
- impact assessment is culturally blind, doesn't cater for Aboriginal social and cultural issues, struggles with social and economic
- impact assessment is a monoculture, dominated by biophysical specialists: capacity issues in dealing with human impacts.

Opportunities: revolution needed

- **EPBC Act is up for its 10-year review this year:** a time to re-examine our 90s paradigm of impact assessment and its underlying assumptions. The 'wicked problems' and policy challenges in 2019 are different. Revolution would be:
 - people-centred, multi-disciplinary, integrated planning that is responsive to community values

- more focussed on livelihoods (or living in harmony with the land) than conservation (or preservation - locking the land up)
- a greater focus on the opportunities of development, in line with the Sustainable Development Goals
- good process - procedural fairness, early and meaningful engagement – to deliver better outcomes.
- **For Northern Australia, we need:**
 - collaborative governance systems (Dale, 2014; 2018)
 - strategic assessments contributing to land use planning
 - a genuine voice to Aboriginal people’s aspirations for livelihoods on their own land
 - a systems approach to reform that incorporates legislation, policy and capacity-building of all institutions.
- **Combining Federalism with the principle of subsidiarity:** With talk of re-establishing a Commonwealth EPA, watch for centralised bureaucracies! The concept of subsidiarity is important: that decisions are made close to those affected. So governance, power and decisions must remain decentralised and tailored to local complexities. The challenges of big infrastructure projects on the Eastern seaboard are a world away from the realities of a ‘develop the North’ agenda and non-renewable resource extraction from remote lands to which Aboriginal people maintain continuing cultural and spiritual ties. Northern Australia could lead a reform agenda based on better governance that incorporates alternative worldviews and knowledge systems.
- **Substantial scope for some common standards and competencies or a new generation of shared principles:** similar to the reforms of the Intergovernmental Agreement and Ecologically Sustainable Development Principles (1992). The structure and mandate of each State and Territory’s regulatory agencies are inconsistent. Some have EPAs, some projects are controlled by Coordinator Generals. Some regulatory agencies incorporate pollution control, others incorporate planning, some focus on state significant or resource projects. In Queensland, social impact assessment is a statutory requirement for major projects. In Western Australia, it isn’t required. Some states refer to statements of effects, others to scoping studies while others incorporate neither. In an increasingly borderless world, can we develop some more contemporary principles (or evaluate our progress – or not - against the IAIA Principles of 1999), competencies and standards and better learning from what was done well in the past.

IAIA 1999 Best Practice Basic Principles guiding Environmental Impact Assessment

Purposive	Rigorous	Practical	Relevant	Cost-effective
Efficient	Focused	Adaptive	Participative	Interdisciplinary
Credible	Integrated	Transparent	Systematic	

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ⁱ Or 247,159 in the September quarter of 2018

https://treasury.nt.gov.au/_data/assets/pdf_file/0006/670893/Population-2018-September.pdf