



Office: 90 Gap Road Alice Springs NT
Mail: PO Box 2796 Alice Springs 0870 NT
Web: www.alec.org.au
Phone: 08 89522497
Email: policy@alec.org.au

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ALEC Submission on the draft Bilateral Agreement between the Northern Territory Government and the Commonwealth of Australia

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980. ALEC's vision is 'healthy futures for arid lands and people' and as such, we are involved in a wide range of conservation activities including; supporting indigenous-led conservation programs, natural resource management projects, engaging in environmental impact assessment processes and contributing to policy and law reform.

ALEC welcomes the opportunity to respond to the draft bilateral agreement made under section 45 of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) relating to environmental assessment. This draft bilateral agreement (the Agreement) replaces the old agreement between the Northern Territory and the Federal Government. The EPBC Act is Australia's legislative centrepiece around environmental protection.

The assessment process is a critical function of the EPBC Act, and devolution of assessment powers from the Commonwealth to the Territory Government should be scrutinised. Our submission focuses on: the timing of this draft; controlled actions requiring expert advice; resourcing capabilities within the Territory Government; and, issues in current environmental protection.

A period of change

ALEC considers it premature for a bilateral agreement to be negotiated while the EPBC Act review is ongoing, in addition to the substantial environmental reform currently underway by the Territory Government. The Samuel's Review Final Report is scathing of the EPBC Act in its current form. The review calls for the establishment of an independent 'cop on the beat', national environmental standards and greater protections for the environment, including native forests. In short, an overhaul of the existing act. How changes to the EPBC Act occur will have significant ramifications for how the bi-lateral agreement is applied. Section 14.3 of the draft bilateral agreement emphasises that parties will need to determine whether a new agreement is necessary in response to changes to the EPBC Act or relevant Territory laws.

The Territory Government is currently undergoing significant environmental reform around mining activities, large-scale greenhouse gas emissions, carbon offsets, biodiversity offsets and water. In addition, the new Environment Protection Act 2019 which will form the foundations of Territory environmental law, remains untested.



The existing platform for which a bilateral agreement is based is undergoing substantial reconstruction. ALEC considers it prudent for the Agreement to wait until the regulatory environment it is informed by is solidified. The Agreement should be halted until changes to the EPBC Act and/ or other relevant Territory laws are finalised.

Controlled actions requiring expert advice

6.4 of the Agreement outlines that controlled actions that involve coal seam gas or large coal mining developments, and/ or controlled actions that are likely to have a significant impact on water resources, including any potential impacts with salinity and/ or salt production require expert advice to be sought. It is important that other processes which pose similar risks to water, climate and country also trigger expert advice. These changes reflect alterations in the resource management landscape in the Northern Territory.

It is integral that all forms of unconventional gas (coal seam, shale and tight gas) developments require expert advice to be considered. In the context of shale gas exploration expanding in the McArthur/ Beetaloo Sub-Basin, with production and a commercially viable industry the goal, it is integral that expert advice is required at the shale gas assessment stage. Fracking as a process and the shale gas industry are in their infancy in the Territory, are dealing with complex geological and groundwater formations and the risk they pose to water, climate and country is significant. With the potential of shale gas and fracking in various basins around the Territory, it is a necessary change that expert advice is required.

Climate considerations are a necessary trigger to seek expert advice. In the same way that expert advice is required for controlled actions that will have a likely significant impact upon water resources, so too should controlled actions that contribute to a significant amount of greenhouse gases into the atmosphere. Climate change is one of the greatest threats facing the Territory, putting communities, industries and ecosystems at risk. The joint bilateral agreement should ensure that climate considerations are assessed by experts during assessment.

Resourcing

There are major concerns around the Northern Territory Environment Protection Authority and Departmental capacity. The implementation of the 135 recommendations from the Pepper shale gas inquiry is a huge process for a jurisdiction which has minor resourcing compared to other states. This implementation program is rigorous and is of national significance. ALEC holds substantial concern around the current capacity of the Northern Territory EPA to fulfill its existing functions in addition to the responsibilities prescribed under the new Agreement.

Efficacy of environmental protection in the Territory

There are issues in the existing Territory environmental laws where development may cause significant environmental impact, but currently are not required to undergo environmental assessment. This is apparent in the exploration of gas, in addition to land clearing activities. As a result, these activities avoid scrutiny through the assessment process. Devolving responsibility to the NT Government assessment process, may increase the likelihood of this issue being exacerbated.

Alexander Vaughan (Policy Officer)

