



annual report

2010-11

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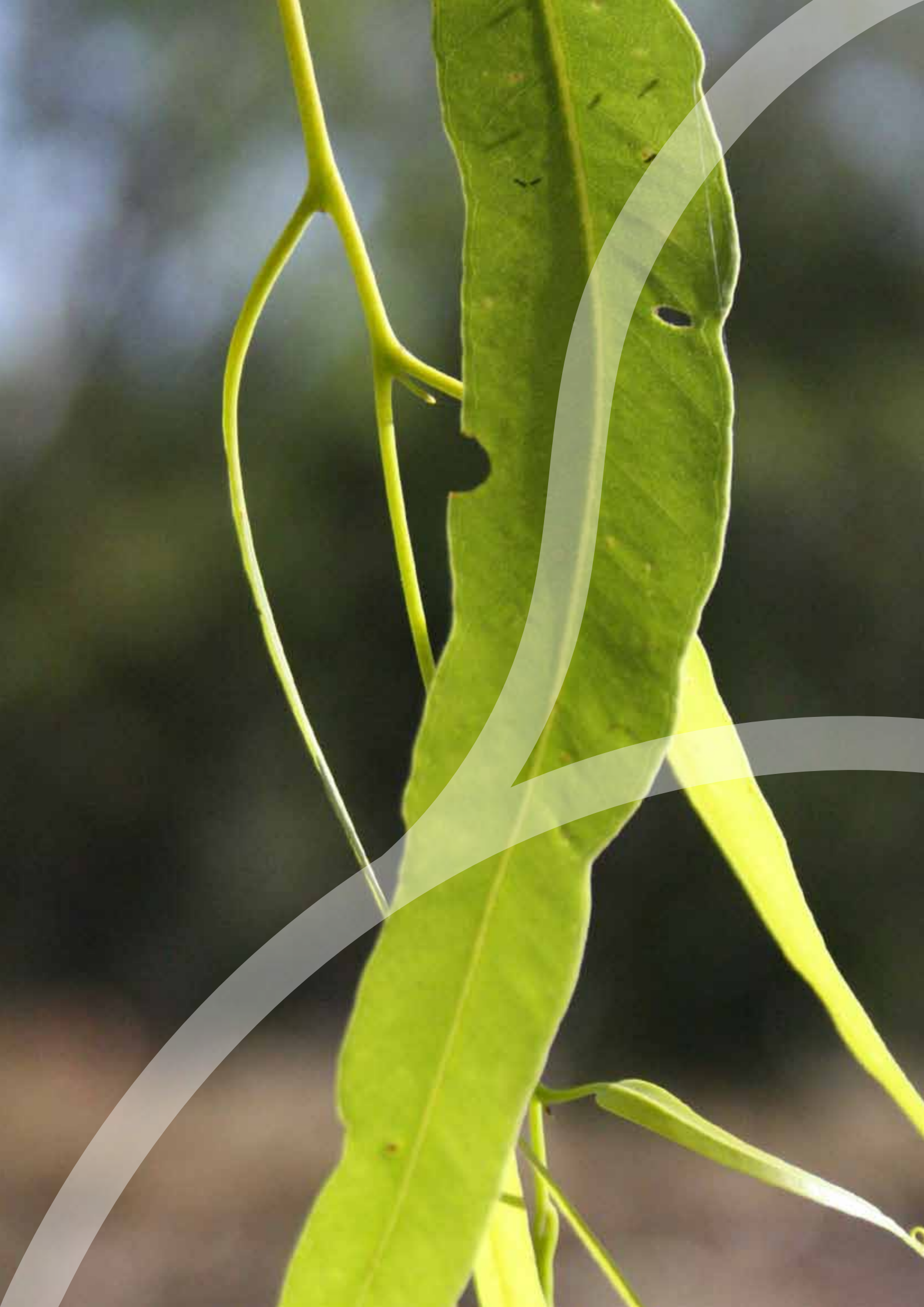
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Purpose of the Report

This Annual Report is prepared in accordance with Part 2, Division 5, 22 (1) of the *Environment Protection Authority Act*.

This report provides an account of the Environment Protection Authority's (EPA) functions and activities for the 2010-11 financial year and outlines future priorities.

The purpose of this report is to inform the Northern Territory Legislative Assembly, other stakeholders and the general public of the EPA's activities for 2010-11.



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Chair's foreword



This 2010-11 Annual Report marks the beginning of the fourth year of work for the Environment Protection Authority (EPA). I have been given the honour of leading the EPA into the future, but take this opportunity to acknowledge the work and leadership of my predecessor, Dr Andrew Tupper.

It should be stated that while I submit this report as the Chairman of the EPA, much of the work during the reporting period was achieved under Dr Tupper's leadership of the inaugural EPA Board. His work in establishing the EPA and getting it operational was a force to be reckoned with;

something I admire greatly and wish to acknowledge.

The EPA was created to provide strategic independent advice to the Minister, businesses and the community about ecologically sustainable development in the Northern Territory.

Two amendments to the *Environment Protection Authority Act* were passed by the Northern Territory Parliament in February 2010 and came into effect in April 2010 and April 2011. These amendments broadened the EPA's mandate to audit, investigate and review agency responses in dealing with and coordinating environmental incidents, and to monitor and report on the cumulative impacts of development.

The past year has been productive for the EPA, which has received multiple incident inquiries, and conducted a series of reviews and assessments aimed at improving environmental practice associated with development. The EPA maintained watching briefs on the *E. coli* outbreaks

on Darwin beaches, the new urban development plans for Alice Springs, and the Greater Darwin Region Land Use Plan where environmental sustainability has been a cornerstone of innovative planning.

In the interests of improving advice, in November 2010 the EPA held the conference '*Unpacking and Demystifying Strategic Assessment*', which focused on how strategic assessment is used in Australia and internationally and how it might be applied in the Territory. This initiative builds on the EPA advice delivered in 2009-10: '*Improving Environmental Assessment in the Northern Territory*'.

The Minister's announcement that government will conduct public consultations around the EPA's recommendations with a view to reviewing the Territory's *Environmental Impact Assessment* (EIA) legislation presents an important opportunity to improve and streamline procedures. The EPA looks forward to the consultation draft of the amended legislation.



Following advice on *'Ecologically Sustainable Development in the Northern Territory'*, the EPA this year produced the *'Ecologically Sustainable Development in Darwin Harbour'* review. Darwin Harbour is one of the Territory's greatest assets in terms of community livelihoods, culture, history and development – past and future. Sustaining development while minimising adverse environmental impacts will be an ongoing challenge for the Northern Territory Government and the community.

I commend the Government for committing to annual reporting by its agencies and for establishing and supporting the *'Integrated Monitoring Plan for the Harbour'* against its *'Darwin Harbour Strategy'* (June 2010). These are giant steps forward. However, the Strategy will need to be adaptive over time in order to encourage best-practice planning and sustainable decision making to protect the Harbour's environment. The EPA reaffirms that the case for the development and integration of appropriate legislation and policy measures, with a clear

regional focus on Darwin Harbour, is a very compelling one.

The EPA completed various inquiries into pollution matters in the last 12 months. These included the inquiries into the petrol spill at the Rio Tinto mine lease and the East Arm Wharf copper concentrate spill, which resulted in delivery of Part 1 of the Final Inquiry Report in April 2011.

The EPA continues to evolve each year and we look forward to the work ahead. It is in the interests of all Territorians that we create a sustainable Northern Territory in which the natural, social and economic dimensions of our environments are understood, integrated, cared for, valued and respected.

Professor Grahame Webb

about us

Our Vision

A prosperous Northern Territory where the natural, cultural and social environments are cared for, valued and respected.

Our Mission

Working in partnerships to create a sustainable Northern Territory.

Our Guiding Principles

- Provide independent and transparent advice
- Demonstrate accountability
- Enable meaningful participation and engagement across cultures and regions
- Promote integration across government agencies
- Operate efficiently

Our Strategic Objectives

- Ensure the distinctiveness of the Northern Territory environment is maintained by promoting best-practice, ecologically sustainable development
 - Undertake headline EPA projects that uncover and address critical environmental challenges and monitor and review those challenges
 - Work with government, industry and the community to develop approaches, practices and mechanisms to achieve ecologically sustainable development in the Northern Territory
 - Promote innovative and adaptive sustainable development and triple-bottom-line accountability at all levels, including capacity building within government and industry
- Promote policy and regulatory clarity to avoid unnecessary duplication and provide greater certainty
 - Foster the principles of ecologically sustainable development:
 - integration
 - application of the precautionary principle
 - inter- and intra-generational equity
 - conservation of biological diversity and ecological integrity
 - improved valuation, pricing and incentive mechanisms and ‘polluter pays’ schemes and
 - public participation



Our Purpose and Role

The EPA was established by the *Environment Protection Authority Act* (the Act) in February 2008 as an independent body to lead the adoption of innovative and contemporary frameworks for sustainable development in the Northern Territory.

In April 2010 and April 2011, amendments to the Act commenced, which strengthened the function and powers of the EPA.

The EPA undertakes projects to address the systemic reform required to review environmental

law and procedures and provides high-level, strategic advice to government, agencies, industry and the community to develop a more sustainable future for Territorians.

In the NT, the regulatory role on environmental issues is performed by the relevant government agency. The EPA's function is to maintain a monitoring role as ombudsman and 'environmental watchdog' to review how effectively government is delivering these regulatory services.

As well as identifying its own strategic projects and matters for inquiry, the EPA

can also respond to specific and immediate environmental concerns by accepting referrals from the community, business and government and non-government organisations.

Issues that are referred to the EPA are assessed further where they:

- serve to address wider systemic and emerging issues relating to sustainable development
- enhance wise decision-making to support environmental protection and
- relate to the broad public interest

our functions and powers



The role of the EPA under the Act is to advise the Minister, business and the community about ecologically sustainable development in the Territory.

Functions under the Act

The function of the EPA, as described in Part 2, Division 1, Section 5A of the Act, is to provide advice about ongoing systemic issues. In achieving its function, the EPA is to:

- review and assess the extent to which, and how, a recommendation under the Administrative Procedures for a particular proposed action has been given effect, and the effectiveness of the environmental conditions of an environmental authority for the proposed action
- review and assess the effectiveness of agency responses in dealing with environmental incidents and the coordination of the responses
- monitor and assess the cumulative impacts of development in the Territory and
- publicly release reports on environmental quality

The Act authorises the EPA, under Part 2, Division 1, Section 5B, to give advice on other issues on its own initiative or at the request of the Minister or a member of the public, relating to:

- achieving best-practice environmental policy and management
- setting objectives, targets and standards for the public and private sectors
- reviewing procedures of the public and private sectors
- legislation and its administration
- issues affecting the Territory's capacity to achieve ecologically sustainable development and
- emerging environmental issues

Powers under the Act

The EPA has the power to do all things necessary or convenient to enable it to perform its function, as per Part 2, Division 1, Section 6 of the Act, including, but not limited to:

- conduct the inquiries it considers appropriate and
- by written notice, require a person to give it relevant information within the reasonable period stated in the notice

In addition, the EPA may ask a person having special knowledge or experience relevant to a particular inquiry to help it conduct the inquiry.

Offences under the Act

The Act describes an offence, under Part 2A, as when a person does not comply with an EPA inquiry or notice to provide information, provided that the EPA has exercised its powers in accordance with its function.

Our Minister

The EPA is an independent statutory authority. In accordance with the Administrative Arrangement Orders in place during the 2010-11 reporting period, the EPA's advice to government was provided to the Minister for Natural Resources, Environment, The Arts and Sport. The responsible Minister was Mr Karl Hampton, MLA.



Our Board

The *Environment Protection Authority Act* provides for the appointment of between four and seven board members, based on their expertise. The members are appointed by the Administrator of the Northern Territory and the Chair is then appointed by the Minister.

Members are appointed for a period of up to three years.

The board members of the Environment Protection Authority for the 2010-11 reporting period were:

- Dr Andrew Tupper (Chair)
- Professor Gordon Duff
- Mrs Judith King
- Professor Donna Craig





Dr Andrew Tupper

PhD, BSc (Hons), GAICD

Dr Andrew Tupper is the Northern Territory Regional Director of the Bureau of Meteorology, and was the inaugural chair of the EPA from 2008 to 2011. Dr Tupper's professional experience includes aviation and severe weather forecasting, climate information work and meteorological research. His roles in the Territory include representing the Bureau at the Bushfires Council and Counter Disaster Council. In his own specialist area, volcanic ash clouds and aviation, Dr Tupper has key roles in World Meteorological Organization and International Civil Aviation Organization groups. Dr Tupper has a Bachelor of Science with Honours in meteorology from the University of Melbourne and a PhD in meteorology from Monash University. Although Melbourne-born, he has lived in Darwin since 1991, aside from 2002-04 when he and his family lived in the beautiful, densely populated and fiercely traditional city of Kagoshima in southern Japan.



Professor Donna Craig

B.A (UNSW), LLB (UNSW), LLM (Osgoode Hall, York University)

Professor Donna Craig is a specialist in international, comparative and national environmental law and policy (LLM, York University, 1983). Professor Craig was one of the founders of Macquarie University Centre for Environmental Law (1983) and a key member of the Centre until her current appointment as a Professor of Environmental Law, School of Law, at the University of Western Sydney. Professor Craig also held a Research Chair as Professor of Desert Knowledge, Charles Darwin University from 2004-2007.

Professor Craig has more than 30 years' experience in research, legal practice, teaching and working with communities, NGOs, Indigenous peoples' organisations, governments and corporations.

Professor Craig's research and publications emphasise the social, cultural and human rights dimensions of legislation, programs, impact assessment and sustainable development.

Her water law research includes resource management, capacity building and Indigenous cultural value issues. She also works with Aboriginal organisations developing natural resource-based livelihoods and advising on national and international legal regimes.

Professor Craig served as Regional Vice Chair for Oceania of the World Conservation Union, Commission of Environmental Law, for eight years, is a member of the Advisory Board of Greenland-based International Training Centre of Indigenous Peoples, and Regional Governor of the International Council on Environmental Law. Professor Craig was a member of the Interim EPA Board that conducted widespread community consultation in the Territory in 2006 on the form and function of an EPA. Professor Craig has been a member of the EPA Board since its inception in 2007.



Professor Gordon Duff

BSc (Hons), PhD, FAICD

Professor Gordon Duff is an ecologist and environmental scientist with more than 20 years' experience in the Australian tropics. Professor Duff was Chief Executive Officer of the Tropical Savannas Management Cooperative Research Centre (CRC) between 2001 and 2006, and held a variety of research and management roles at James Cook, Deakin and Charles Darwin universities prior to that. Since October 2006 Professor Duff has been Chief Executive Officer of the CRC for Forestry, the national forestry research and development organisation. He has a Bachelor of Science (Honours) from the University of Tasmania, a PhD in plant ecology from James Cook University and he is a Fellow of the Australian Institute of Company Directors. Professor Duff was Chair of the Interim EPA Board that conducted widespread community consultation in the Territory in 2005 and 2006 on the form and function of an EPA and has been a member of the EPA board since its inception. He is also Chairman of the Forest Practices Authority and the Forest Education Foundation.



Mrs Judith King

BA, FAICD; Adjunct Professor
Swinburne University (1999-2006)

Mrs Judith King has more than 20 years' board experience in the private and public sectors. She is currently Chair of the Northern Territory Power and Water Corporation, board member of the Northern Territory Environment Protection Authority and Deputy Chair of the Victorian Commission

for Gambling Regulation. Mrs King has been an adviser to business and government on service industry strategy, trade and regulation, and was Foundation Executive Director of the Australian Coalition of Service Industries. She was awarded an Australian Centenary Medal in 2003.



Note: A new Board was appointed for the 2011-13 reporting period. New board members include Professor Grahame Webb as the Chair, as well as board members Dr Peter Whitehead, Professor David Parry, Professor Donna Craig, Dr Andrew Tupper and Mr Cris Cureton.



our approach

The EPA has established guidelines and criteria which guide its receipt of referrals and requests for advice regarding environmental issues, see Figure 1a and 1b. This approach ensures consistency and clarity of the EPA's operations. The operating protocols in Figure 1a and 1b are designed to ensure the EPA's resources are used optimally and in a manner that adds value to the work done by environmental regulators and other integrity agencies.

In the 2010-11 reporting period, the EPA used the following criteria to determine whether to look into a matter.

(a) Processes requiring independent scrutiny

- i. Matters involving a high level of public interest in adverse outcomes from the application of relevant laws, regulations or procedures in the Northern Territory;
- ii. A matter or incident where there is a reasonable possibility of processes being inadequately applied under relevant laws, regulations or procedures in the Northern

- Territory or where the relevant laws, regulations or procedures are not in place;
- iii. A matter or incident where there is a reasonable possibility of inadequate environmental monitoring, inadequate application of environmental standards, or inadequate reporting of environmental impacts in the Northern Territory.

(b) Major environmental issue

- i. An environmental issue emerging over the medium to long term with the reasonable potential for significant and broad scale environmental impact.
- ii. A matter or incident of unprecedented severe environmental impact or causing serious environmental harm

(c) Environmental policy

- i. Significant matters of policy relating to ecologically sustainable development in the Northern Territory, including whole-of-government policy integration

(d) Environmental legislation

- i. A matter that raises reasonable concern about the adequacy of existing Territory environmental legislation.
- ii. A matter that raises reasonable concern about the impact of proposed legislative change on the capacity for government or any other organisation or person to protect the Territory's environment.

Figure 1a – What happens when the EPA takes receipt of an incident report or request for advice
 Last updated 8 September 2010

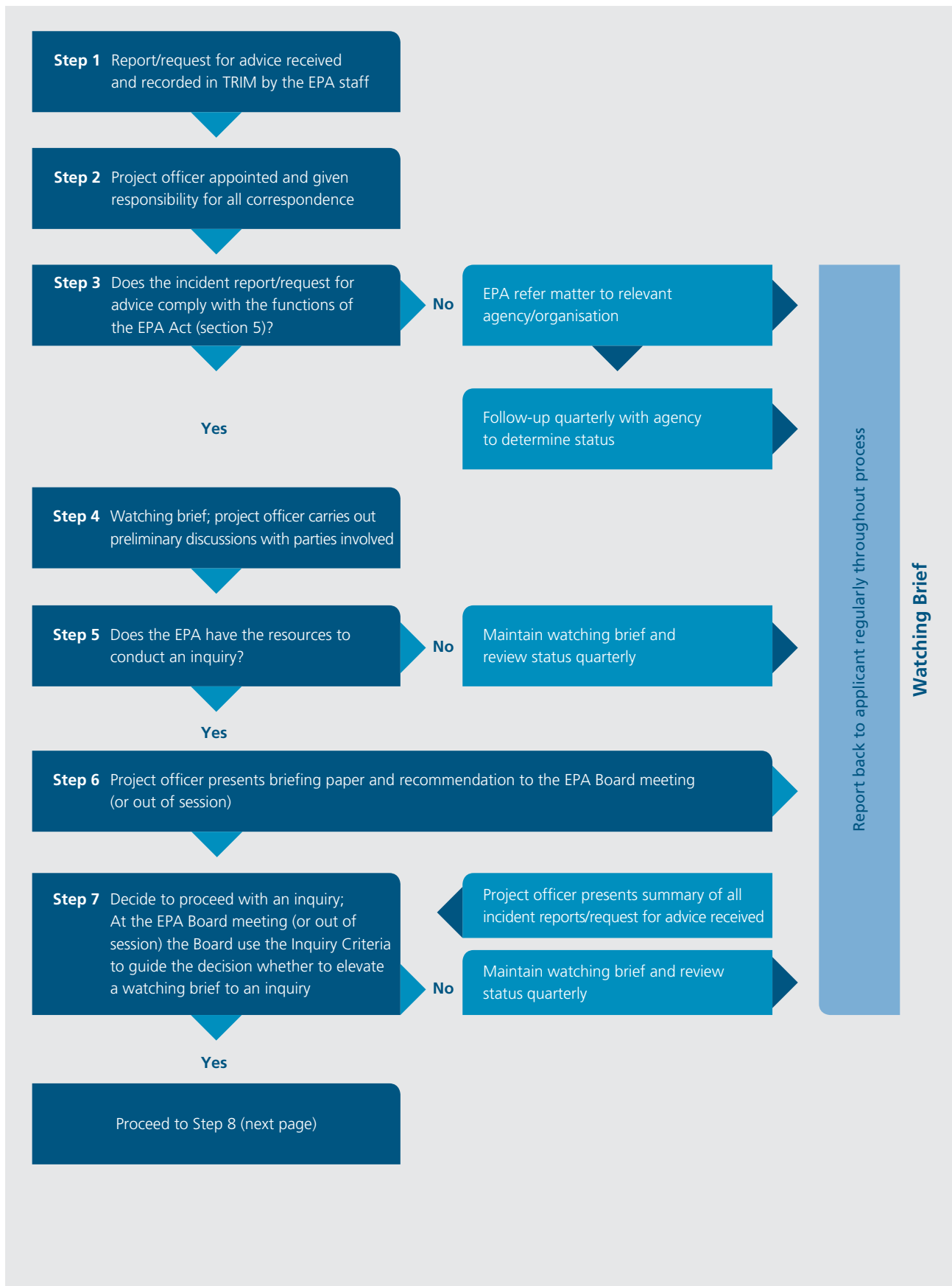
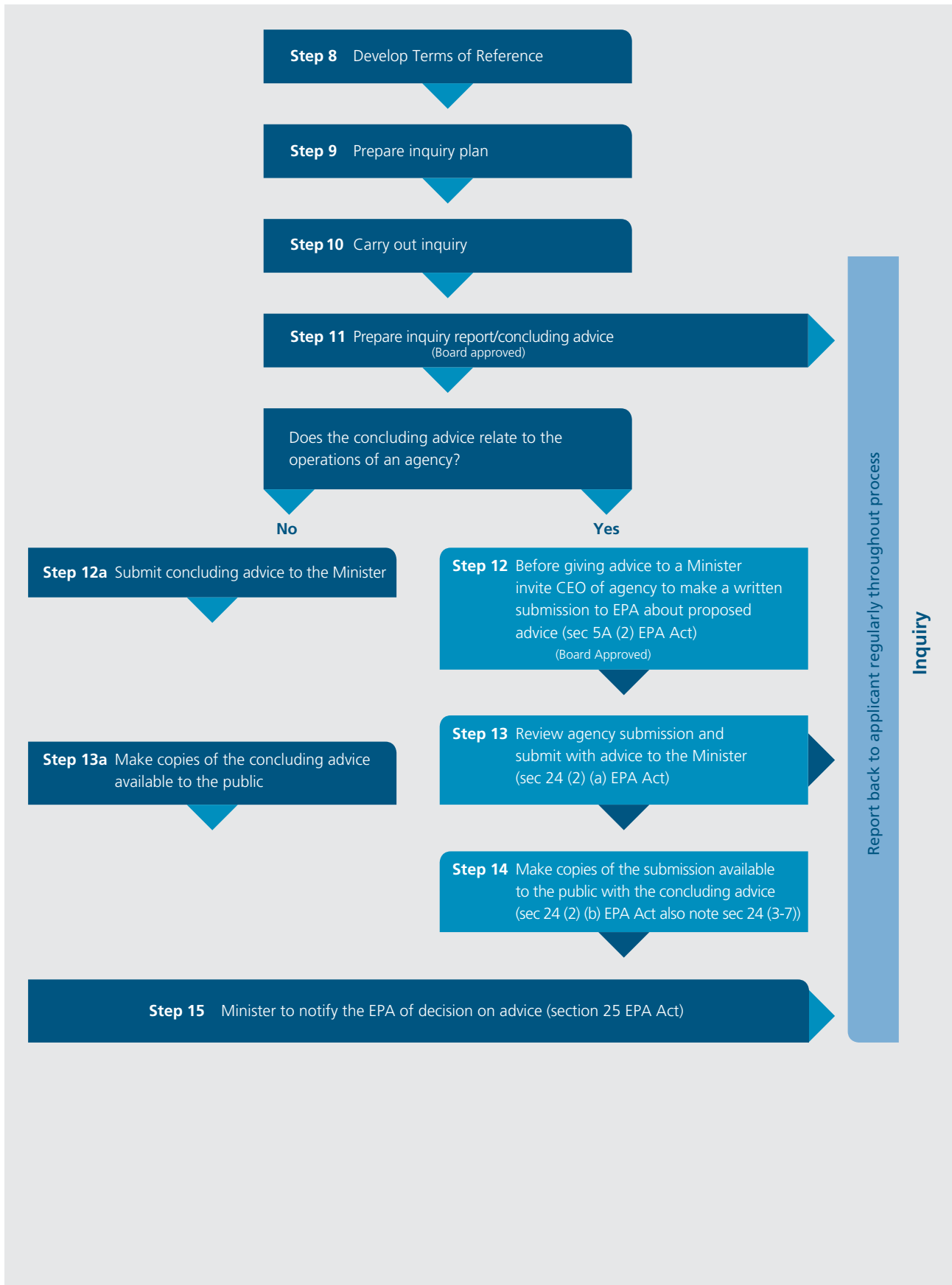


Figure 1b – What happens when the EPA takes receipt of an incident report or request for advice
Last updated 8 September 2010



Our Strategic Plan

The EPA Strategic Plan overviews its functions and powers and states the purpose and direction of work for the next two years.

Broadly, the plan outlines how the EPA will fulfill its mandate of:

- driving regulatory review and reform of all Territory legislation related to sustainable development and
- responding to emerging and critical environmental issues in the Territory by providing leadership and accountability

It also provides the framework against which EPA activity is reported.

Under this plan the EPA's priorities for the reporting period were:

Agenda-setting projects

to strengthen the legal and institutional frameworks for sustainability in the Territory.

The EPA will prioritise referred projects that address long-term systemic issues for the Territory and continue to initiate projects of importance for a sustainable region.

Contributing to broader Northern Territory debates

by highlighting the applicability of environmental protection and sustainability matters to current government and non-government processes.

The EPA will work to integrate best-practice, ecologically sustainable development and environmental protection in new policy and program development through active engagement with government and the community.

Review and assess to actively improve the effectiveness of government performance in protecting the Territory environment.

The EPA will continuously review the environmental approval process and the response to environmental incidents and provide advice aimed at establishing better processes to protect the ecological systems that support the economy of the Territory.

Monitoring and reporting

on key aspects of Territory environment to inform future development.

The EPA will draw attention to and enable examination of environmental issues of significant concern to the Territory by collating and publicising research on the cumulative impacts of development.

Communications and engagement

to increase awareness of the importance of the health of ecosystems to the long-term prosperity of the Territory for current and future Territorians.

The EPA will strategically inform and consult with stakeholders and the broader community about EPA policy and program development.

Organisation of the operating framework

to support EPA administration and the development of internal protocols and strategies.

The EPA will document internal operational practices and decision making in a clear and transparent manner to ensure consistency and accountability in relationships with external stakeholders.

agenda setting projects

In 2010 the EPA continued to initiate and encourage discussion as well as recommend actions to improve environmental management policies and procedures. The advice on these matters was directed to the Minister, but was also made publicly available as a source of evidenced-based research and discussion, for use by any party, including local government or corporations to independently adopt as a best-practice guide.

During the reporting period, the EPA delivered advice to the Government on *Ecologically Sustainable Development in the Darwin Harbour Region* and further expanded its advice on *Improving Environmental Assessment in the Northern Territory* by facilitating a detailed examination of 'strategic environmental assessment' as a development assessment tool through a conference, workshop and report.

Ecologically Sustainable Development in the Darwin Harbour Region

In 2009 the EPA produced a major report to advise the Minister on ecologically sustainable development in the Northern Territory. The report sought to clarify how ecologically sustainable development should be defined in the Territory and recommend the adoption of an agreed set of principles. The report found that the international principles of sustainable development could indeed be applied to the Territory, but that implementation strategies for the principles would need to consider the Territory's distinctive climatic, geographic and cultural values.

Following this advice, the EPA proceeded to focus on Darwin Harbour and to assess whether the current regulatory and decision-making frameworks support the development of the Harbour catchment in an ecologically sustainable manner.

The report revealed there were too many agencies acting in silos when making decisions regarding

development within the Harbour, and that the environmental health of the Harbour was not the major priority for any of them. The report acknowledged there would be serious future issues for the environmental health of the Harbour region if this "patchwork" of governance was allowed to continue.

Specifically, decision making for activity within the Harbour was tied to departmentally fractured bureaucracy. No single agency was pursuing integrated management of the Harbour and if government was to honour its endorsement of the *Darwin Harbour Strategy* (the Strategy) – launched in June 2010 by the Darwin Harbour Advisory Committee – with implementation, the governance frameworks for the Harbour would require serious revision.

The advice stopped short of suggesting a model for governance and proposed this could be developed at the Government's request. It stressed, however, that this would be of little value unless there was buy-in and commitment from all stakeholders to integrate



planning, decision making and management of the Harbour. Specific observations were made under four categories:

Ecologically Sustainable Development

1. The EPA recommended the Government develop and implement governance mechanisms for the application of ecologically sustainable development in the Territory.
2. The sustainable development of the Harbour could be progressed through a legislative mechanism that provides an overarching sustainable development governance framework.

Darwin Harbour Region

3. The Strategy provides an effective basis for best-practice decision making. It is currently the one document for Darwin Harbour that aims to achieve integration across government and other interest groups.
4. The Government has endorsed the Strategy and in doing so has committed to annual

reporting by its agencies against the Strategy and the establishment and support of an Integrated Monitoring Plan for the Harbour. This endorsement is commended.

5. The Strategy alone cannot achieve the necessary change required to ensure sustainable decision making for, and management of, the Darwin Harbour region.
6. A coordinated approach to legislative and policy change is recommended and should include key agencies with responsibilities in the region such as the Department of Lands and Planning and the Department of Natural Resources, Environment, the Arts and Sport.
7. Existing governance frameworks do not facilitate the consideration of environmental, economic, social and cultural sustainability. Decision making about the Harbour is highly sectoral; the cumulative impacts of decisions are not being considered and there is a significant lack of

consistency in the provisions for public participation and engagement in existing legislation, policies and strategies.

8. There is public expectation that government will make the changes necessary to put in place robust and effective regulatory frameworks in order to ensure the values of Darwin Harbour are protected for current and future generations.

Integration

9. The principle of integration is of critical importance in planning, land-use decisions, regulation of polluting land uses, protecting natural assets and monitoring impact on Darwin Harbour.
10. An integrated approach ensures that each of the above governance elements for Darwin Harbour inform and enhance each other for the greater good of the region.

Broader Implications

11. While this review has focused on the Darwin Harbour region, the EPA considers that a number of its findings are relevant beyond the region, specifically:

- The significance of the relationship of the *Mining Act* and the *Mining Management Act* with the *Planning Act*, the *Environmental Assessment Act*, the *Water Act*, the *Waste Management and Pollution Control Act*, and the *Territory Parks and Wildlife Conservation Act*. This information is considered relevant to the current government initiative of harmonisation
- The lack of appropriate governance mechanisms to ensure findings of the EIA process informed subsequent decisions about development. This was highlighted in the EPA's report '*Improving Environmental Assessment in the Northern Territory*' and is recognised by the EPA as an issue in its current investigation of the copper concentrate spill at East Arm Wharf
- Important shortcomings in the *Waste Management and Pollution Control Act*, specifically its limited licensing regime and the current difficulty of establishing an offence under this Act. This is relevant to the current review of the

Waste Management and Pollution Control Act

- A lack of effective integration between key environment protection frameworks, such as the *Territory Parks and Wildlife Conservation Act* and important development approval frameworks such as the *Planning Act*. This results in key decisions, such as land allocation, being made without adequate reference to biodiversity and water protection objectives
- Establishing effective governance frameworks to ensure that ecologically sustainable development is defined and appropriately applied as part of decision-making process
- The absence of effective sustainability provisions limits the capacity of current governance frameworks to promote optimal outcomes in the Darwin Harbour region and across the greater Northern Territory

The Minister and his department have acknowledged receipt of this report and several initiatives have already commenced to improve governance in Darwin Harbour. Most significantly, the Government has moved swiftly to establish the Darwin Harbour Integrated Monitoring and Research Program and established a task force to enquire into *E. coli* outbreaks in the Harbour.

Strategic Environmental Assessment

In 2010, the EPA provided final advice to the Minister on his referral request to investigate the environmental assessment and approval processes for major development proposals as outlined in the Territory's *Environmental Assessment Act*.

The EPA extended the terms of reference of its investigation to include:

- information on principles
- objectives and procedures of environmental assessment
- best-practice environmental assessment examples from other jurisdictions and
- possibilities for a future Territory environmental assessment model

In 2009 the EPA produced a discussion paper and held public forums to inform and encourage debate regarding the current system. The EPA received 21 submissions from organisations and individuals across the Territory. Following this, consultative meetings were held with 28 community and industry groups and government authorities, including public meetings in Darwin and Alice Springs. Indigenous consultation was undertaken by the Batchelor Institute of Indigenous Tertiary Education.

In April 2010, the EPA publicly released its final advice to the Minister on *'Improving Environmental Assessment in the Northern Territory'*. Within the report, the EPA recognised environmental assessment as a critical tool for achieving sustainable development in the Territory.

Among the recommendations of this advice was a significant revision of the current *Environmental Assessment Act* to allow for a strategic environmental assessment approach. This new approach would establish a process within the Act that could be used as a strategic planning tool to evaluate the social, economic and environmental impact of policies, plans and programs. Strategic assessment assists in assessing the cumulative impact of projects, in defining opportunities and threats and requires both public participation and a whole-of-government approach to development.

Then, in November 2010, the EPA expanded this recommendation by hosting a whole-of-government workshop, *'Unpacking and Demystifying Strategic Assessment'*. It included presentations by strategic assessment practitioners from around Australia followed by a workshop of facilitated discussions. The conference and workshop provided an opportunity for discussion of the potential benefits, constraints

and risks associated with strategic environmental assessment.

The provision of a tool to establish common goals and objectives among stakeholders and an integrated and holistic approach to allow for regional assessment and planning, including environmental, social and economic considerations as well as assessment of cumulative impacts, were acknowledged as key benefits. It was highlighted that the process may also assist the long-term planning required for network infrastructure and in addressing the long-term challenges of environmental sustainability.

Beneficial to developers or the management of social and environmental impacts was the potential for strategic assessment to increase development certainty by providing a more streamlined process, reducing red tape and providing upfront guidelines.

Potential constraints, barriers to implementation and risks involved with the application of strategic assessment included concerns about the cost of strategic assessment and whether there would be sufficient technical capacity, resources and political will in the Territory to implement this approach. Further concerns surrounded the possibility that strategic assessment may lead to a duplication of work already being undertaken through an environmental impact assessment

(EIA) process, or may result in an additional level of regulation.

There were also concerns that strategic assessment may be perceived negatively by potential investors or may enable developers to gain approval at the expense of environmental protection. The potential time gap between strategic assessment and subsequent projects may also create investment uncertainties as environmental and development outcomes may not be assured into the future. Associated with this were concerns that the outcomes of strategic assessment may not be properly incorporated into decision making.

Through identifying and discussing challenges and benefits we have commenced the thinking processes that might pave the way for improvements in EIA processes. The workshop report was provided to all participants and we hope it is the catalyst in discussion for change for the better.



contribute to broader Northern Territory debates

The EPA maintains a close watch over emerging environmental issues, which may present opportunities or challenges for the Territory community. This includes facilitating, engaging in and providing informed comment on current government and non-government processes.

The EPA participates in and supports existing multi-agency plans, programs and community events as advocates of sustainable development for key environmental issues for the Territory.

Throughout 2010-11, the EPA has encouraged and engaged in discussion on:

- sustainable mining
- sustainable infrastructure and buildings
- Territory Eco-link and
- a low-carbon future

In conjunction with the Minerals Council, Darwin City Council, the Environment Defenders Office and Environment Centre NT, the EPA continued the highly successful Environmental Practice, Policy and Law Seminar Series. Seminars this year featured Mr Robin Mellon

from the Green Building Council Australia, Mr Doug Mallard from the Green Infrastructure Council Australia and Mr Ross Garnaut who spoke on the 'Low Carbon Future for the NT'.

The EPA made representations to the Review of the Victorian EPA, the Productivity Commission enquiry into reducing 'green tape' and the initial consultations on the review of the *Mining Management Act* in the Northern Territory. The EPA provided submissions to the Council of Australian Governments' review of the National Ports Strategy and initial scoping consultations regarding a review of the *Darwin Port Corporation Act*.

The EPA actively encouraged public awareness of and contribution to major project environmental assessments and government consultations about environmental impact assessment reforms. The EPA commended, through a public statement, the introduction of container deposit legislation in the Territory and the increase of penalties for offences against environmental laws.

The EPA provided follow-up briefings on our advice to the Minister on *Ecologically Sustainable Development*. This included briefings for Larakia Development Corporation and departments of the Chief Minister, Lands and Planning, Treasury, Construction, Natural Resources, Environment, The Arts and Sport and Resources. Briefings were also provided to the Opposition Spokesperson for the Environment and the two independent members of the Legislative Assembly.

Briefings from the Alice Solar Cities Committee, Central Land Council Land Management Division and Territory Eco-link were delivered to the EPA Board. The draft Native Vegetation legislation in the Territory, amendments to the *Pastoral land Act* and a consultation draft of the Greater Darwin Region Land Use Plan were also received. A contribution to the guiding principles for Kilgariff enquiry by design process was submitted by the EPA.



reviews and assessments

Following the commencement of amendments to the *Environment Protection Authority Act* in April 2010, the EPA's functions were expanded to include a specific role to review and assess the effectiveness of government agency responses to environmental incidents, and the coordination of the responses. The EPA has the power to conduct inquiries it considers appropriate in order to carry out this function.

A number of environmental incidents were brought to the attention of the EPA throughout the reporting period, through the media and by public referral. The EPA responded by means of a formal inquiry or a more enclosed watching brief.

East Arm Wharf Copper Concentrate Incident Inquiry

In April 2010, the EPA took on its first public referral in its launch of an inquiry into the copper concentrate pollution incidents at East Arm Wharf in Darwin Harbour. Media reports alleged

that significant amounts of copper concentrate had spilled from a loading chute into the Harbour and that the incident had not been reported, either by the Darwin Port Corporation, which owned the wharf, or by the operator of the ship loading facility, as required under the relevant pollution legislation. Other incidents of dust emission and spillage of copper concentrate also came to light. Terms of Reference for the inquiry were established following initial investigations by the EPA.

The inquiry commenced in May 2010 with respect to the terms of reference that were independent of the regulator's investigation. The remaining terms of reference were deferred pending the outcome of the regulator's investigation.

Part 1 of the report of the formal inquiry was released in April 2011. Its key findings were as follows.

After reviewing the legislative processes that facilitated the East Arm Wharf development and the approval of the batch loading facility and its current operations, the EPA released Part 1 of the

inquiry's report in April 2011. Its key findings were:

- There was poor integration between environmental protection regimes and planning and land-use processes
- The planning and development processes failed to capture and assess cumulative impacts and significant land-use changes
- The prevailing commercial pressures under which the Darwin Port Corporation operates has the potential to override its fundamental environmental responsibilities in its current decision-making paradigm
- There was a lack of transparency and decision making in development planning, resulting in loss of public faith

The EPA reviewed the existing triggers, criteria and practices in place for responding to environmental incidents, finding that:

- Triggers for reporting were in place but were not activated, partly due to a lack of clarity over what constitutes an incident and partly due to a failure to follow procedure



- There was uncertainty surrounding apportionment of responsibility for activities at the wharf
- Action by the operator to mitigate known risks was inadequate and there was insufficient incentive in the form of penalties and offence mechanisms to improve risk management
- While guidance provided by regulators is adequate where a formal environmental impact assessment process is determined, the systemic barriers between the planning and environmental protection regimes resulted in a lack of such guidance in this instance

The EPA identified and assessed the effectiveness of steps put in place since the incidents to reduce the likelihood of such incidents occurring in the future. It found:

- Darwin Port Corporation has made significant environmental commitments since the incidents, through its Environmental Policy and subordinate plans and operational actions, however these commitments are not legally binding
- The operator has undertaken physical and procedural changes in relation to loading copper concentrate, which have reduced the risk of future spills, however a long-term solution to dust emissions is yet to be implemented
- The role of the regulator will be crucial in monitoring the extent to which environment protection commitments are put into practice and maintained
- Public accountability of the Port Corporation's activities has been improved through making environmental protection commitments publicly available
- assessment process than is currently in use
- A balance between economic and natural values needs to be achieved by developing procedures to enable responsiveness to economic opportunities without having to circumvent environmental assessment processes
- Operational environmental management responsibilities in an environment of multiple stakeholders need to be carefully delineated and sufficient resources provided to enable effective management
- Climate change adaptation planning needs to be incorporated into assessments of future development proposals

The EPA also considered governance and environmental management at the wharf and commented on the East Arm Wharf Facilities Master Plan. It commented:

- The extensive scope of works proposed at the wharf will potentially result in cumulative environmental impact, which will need to be managed through an improved environmental

At the conclusion of Part 1 of the Inquiry, the EPA advised the Government to:

1. Develop and publicly release specific sustainability objectives for Darwin Harbour against which development proposals should be assessed.
2. Legislate for and implement systems that ensure environmental conditions crucial to the mitigation of adverse impacts on these objectives are supported by robust enforcement regimes, including annual audits at high-risk sites such as ports.
3. Establish a general responsibility for environmental sustainability as part of the functions of the Darwin Port Corporation.
4. Establish a specific responsibility for environmental sustainability as part of the functions of the Darwin Port Corporation.
5. Establish clear responsibility, in the *Darwin Port Corporation Act*, for the preparation and implementation of an environmental management plan by Darwin Port Corporation in order to manage risks to the environment.
6. Ensure that the Port's environmental management plan facilitates the extension of responsibility for environmental safety to third-party operators of port facilities.
7. Establish a specific responsibility for environmental safety and management as a function of the Darwin Port Corporation Board.
8. Require Darwin Port Corporation to include reporting on environmental performance in its annual report.
9. Amend the *Environmental Assessment Act* to ensure consideration of cumulative environmental impacts and include a review mechanism to ensure environmental impact assessments are still contextually appropriate.
10. Require the legal duty to report environmental incidents is included in all operational agreements signed by the Darwin Port Corporation and clearly articulated to third-party operators of port facilities, as well as in all training activities.
11. Strengthen the offence mechanisms under the relevant pollution legislation to provide greater economic incentive to operators to comply with environmental requirements.
12. Review environmental legislation to reduce the reliance on the standard of environmental harm as the trigger for incident reporting.



13. Implement recommendations made by consultants to the Darwin Port Corporation for upgrade of the ship loading infrastructure before expanding hazardous bulk mineral loading.
14. Urgently establish a truck wash-down facility at the wharf.
15. Formalise arrangements for the provision of advice by the Bulk Users Advisory Group to the Darwin Port Corporation.
16. Require the results of environmental sampling undertaken in the water at East Arm to be made publicly available.
17. Implement an adaptive review process for environmental management plans for future development works at the wharf.
18. Require environmental assessment be part of every development application process.
19. Ensure that operational environmental management responsibilities are considered and allocated at the time of development consent.
20. Require that all future development and operation proposals at East Arm Wharf include consideration of climate change and sea level rise.

The EPA report into the inquiry was published in April 2011 and is available on the EPA website.

Part 2 of the inquiry will commence in the latter half of 2011 and will consider the following Terms of Reference:

- Review the methods and reports of concurrent investigations that have been undertaken by relevant arms of the Territory Government into the incident, to assess their thoroughness, effectiveness and the uptake of recommendations for prevention of future similar incidents
- Using the investigation reports and other information as necessary, critically analyse the effectiveness of the communication channels and links between stakeholders and the effectiveness of Territory Government's existing internal operations in relation to the management of incidents as demonstrated by the response to the copper concentrate spill
- Specifically assess the extent to which the public can be reassured failures in regard to the legislative and other processes involved in the regulating and reporting of environmental incidents at East Arm Port will not be repeated

Rio Tinto Alcan Gove Petrol Spill Inquiry

In June 2010, Rio Tinto Alcan Gove employees discovered that a storage tank on site at the Rio Tinto Alcan mine lease on the Gove Peninsula, containing approximately 70 000 litres of unleaded fuel, had leaked its entire contents. The incident was reported by Rio Tinto Alcan to the Department of Resources (the regulator) as required under the *Mining Management Act*.

The EPA, informed of the incident by the regulator, initially determined to maintain a watching brief of the matter, specifically focussing on the adequacy of infrastructure standards for the current operational plant and mine; the legal status, enforcement and compliance requirements in relation to these standards; the adequacy of the current authorised mine management plan and the adequacy of the inspection regime and implementation of this regime; and whether the public could be reassured such an event will not happen again.

In September 2010, the EPA determined to escalate the watching brief to an inquiry, on the grounds that close investigation of this incident was warranted to help to inform the Territory Government's mining harmonisation reforms, which were at that time in the public domain for consultation.

The EPA's inquiry report was released in February 2011. Its key findings are summarised below.

The EPA found that the standards in place for the operational plant and mine are not adequate. The adoption of the relevant Australian Standard (AS1940) under the Dangerous Goods Regulations created a rigorous statutory regime of storage tank monitoring and inspection. There are also industry standards, which however, do not impose penalties for non-compliance.

A key problem identified in the inquiry was the reliance, by both Rio Tinto Alcan Gove and the regulator, on the industry standard rather than the statutory standard and requirements. Hence there was a tendency not to monitor or enforce compliance with respect to the statutory standard.

The division of responsibilities between the regulator and NT Work Safe, which administers the Dangerous Goods legislation, appears to have resulted in a gap in the compliance and enforcement regime for mine site infrastructure. Possibly partly due to the fact that it did not administer the Dangerous Goods legislation, the regulator failed to require the operator's mining management plan to include any reference to AS1940. As NT Work Safe has responsibility for workplace safety but not environmental protection, it was not its role to enforce the environmental aspects of AS1940.

The failure of the Mining Management Plan (MMP) to include requirements relating to the storage of dangerous goods on site was identified by the regulator when the MMP was originally submitted. However, the regulator proceeded to approve the MMP despite this matter not being rectified. This indicates a less-than-rigorous approach to compliance by the regulator.

Even had the mining management plan included the requirements of AS1940, the mining regulatory framework does not provide a robust offence mechanism for non-compliance with an MMP. For example, there is no legal obligation on the operator to provide MMP compliance reports to the regulator. The EPA understands, however, that it is Government's intention to rectify this in the current review of the *Mining Management Act*.

The reliance in the *Mining Management Act* on environmental harm as the standard of proof has been tested under other environmental protection legislation and found to be problematic in penalising pollution incidents. This is a further weakness in the regulatory framework that needs to be rectified.

The EPA concluded that if the current approach to regulation and management of mine site infrastructure continues, it is almost inevitable that another similar incident will occur. It should be noted that the petrol spill at

Rio Tinto Alcan Gove was not an isolated incident. The poor reporting of two other relatively serious incidents involving alumina spills, indicate that the reliance by the regulator on self-reporting and self-regulation, has proved inadequate. The failure to take punitive action following the occurrence of these other two incidents,) suggests that the system is not working effectively and that the regulator does not have confidence in the current offence mechanisms.

In considering whether the public can be reassured that another incident of this nature will not occur, the EPA noted the lack of public participation in the regulation of mining activities. There is no requirement for public accountability: documents such as MMPs are not made public; nor are details of compliance monitoring, site inspections and enforcement actions by the regulator. The public is unable to access information regarding environmental incidents at mine sites, the causes of such incidents or how they are being dealt with.

There is a need to review the *Mining Management Act* to remove any restrictions of the public release of such information.

The EPA provided advice to the Government that:

1. Improved management of the environmental risks posed by mining would be achieved if MMPs were required to specify infrastructure standards,

inspection requirements, and responsibilities of each party in relation to monitoring compliance. The regulator and NT Work Safe should clearly articulate the division of responsibility for environmental protection and human workplace health and safety.

2. Resources for compliance activities should be linked to the amount of mining activity in the Territory. Compliance should also be an output reporting measure for the regulator, to improve public accountability of the management of environmental risks in mining.
3. Compliance and monitoring should be strengthened by including consideration of an applicant's history in complying

with MMPs and by expanding the statutory reporting obligations of mine operators to include environmental incidents, risks and non-compliance with the MMP. In addition, Environmental Management Objectives (EMOs) should be formulated to cover different mine types and should include minimum inspection requirements based on the level of environmental risk. These EMOs would then provide guidelines for individual MMPs.

4. The exclusion of mining activities in the *Waste Management and Pollution Control Act* should be reversed and the *Mining Management Act* should provide a strict liability offence for the release of polluting substances.

A penalty system should be introduced for ongoing failure to comply with an MMP.

5. Transparency and accountability should be improved by making mining authorisations and conditions, MMPs and monitoring information by the regulator public.
6. At the expiry of the current lease the new lease should specify that failure to adequately manage environmental risk constitutes a breach of the lease and triggers punitive action.

In addition to providing advice to the Government, the EPA participated in the review of the *Mining Management Act* and now awaits the public circulation of the proposed new Bill.



Rio Tinto Alcan Alumina Dumping Watching Brief

In April 2010, the EPA received notification from the Department of Resources (the regulator), that a significant amount of alumina material from the Rio Tinto Alcan mine lease Gove had been disposed of in Melville Bay, when the material became wet and unsuitable for export.

The EPA determined to maintain a watching brief of the matter, with a view to assessing the thoroughness, appropriateness and adequacy of the relevant government agency's response to the incident; to examine the legislative and systemic barriers to public interest-governed mining practices revealed by the incident; and to consider the extent to which the public could be reassured such an event will not happen again.

The watching brief was closed in March 2011. However, the EPA determined to monitor the implementation of legislative reforms on the Government's agenda.

In summation, the EPA found that the current environmental management regime for mine sites failed to prevent an ad hoc decision by an employee of one of Australia's largest mine employers to dump 30 tonnes of alumina into coastal waters. The delegation of authority at the mine site was inadequately supported by checks and balances to protect the environment and it was only a matter of good fortune that the incident did not result in detriment to the environment.

It is, however, apparent that the internal and external investigations of this incident were a constructive lesson for all parties involved.

Consideration of this incident led the EPA to reach similar conclusions to those reached in relation to the Rio Tinto Alcan Gove petrol spill incident. The laws relating to the management of environmental risk on mine sites need to be strengthened to support prosecution for the deliberate dumping of minerals into coastal waters by creation of an 'environmental nuisance' offence, which does not require proof of environmental harm to be an offence.

The EPA supports the harmonisation of existing frameworks for environmental protection on and off mining leases to more adequately address environmental incidents within these two environments.

A summary of the EPA's review of this incident is available on the EPA website.

Darwin Beaches *E. coli* Outbreaks Watching Brief

Following the closure of a number of Darwin beaches throughout June 2010 due to outbreaks of the *E. coli* bacteria, the EPA established a watching brief of the collaborative response to the outbreaks being taken by NT and local government agencies. The brief sought to determine whether there is effective communication between relevant agencies regarding the investigation; whether the responses and investigations are being conducted in an optimal manner; and whether the public can be reassured that the outbreaks will not happen again.

This watching brief remained open at 30 June 2011.

Alice Springs Planning Watching Brief

In September 2010, the EPA held a board meeting in Alice Springs, where it spoke with local stakeholders, the community and government and non-government agencies. Interest in the planning mechanisms for Alice Springs, and the way that the principles of ecologically sustainable development might inform those mechanisms, was expressed by all these parties. With the airport land release in Alice Springs having

just been announced, the Board considered it timely and important to conduct some preliminary inquiries into the issue.

The Board identified the objectives of its preliminary inquiries as being to determine:

- whether planning decisions in Alice Springs (in the context of the 'Planning for the Future' project) are supported by the EPA's recommended principles of environmentally sustainable development

- whether the public can have faith that the current planning tools, methods and structures will support integrated decision making in relation to planning and
- whether there are systemic barriers or natural resource constraints that are driving planning in a manner that is not supported by the community

Preliminary inquiries for this watching brief were ongoing as at 30 June 2011.



communications and engagement

The EPA's communications and engagement activities were held in Alice Springs, Darwin, Katherine and Tennant Creek during the reporting period. Activities ranged from increasing public awareness of the EPA's unique functions for protecting the environment, to providing a platform for public discussion on emerging environmental issues and environmental topics.

The EPA held stalls on the Territory regional show circuit in Alice Springs, Tennant Creek and Katherine for the second year, and in Darwin for the first time. Members of the EPA Secretariat provided information to the public about the EPA's functions and received feedback from Territorians on environmental issues. More than 150 Territorians aged from three to over 50, contributed drawings for the EPA message quilts which will be displayed in regional libraries to raise public awareness of caring for the environment. The drawings represent messages on reducing pollution, keeping water clean, protecting wildlife and recycling.

Other activities included the Board hosting a visiting technical

team from Papua New Guinea's Department of Environment and Conservation who were on a study tour. The team visited the Conoco Phillips plant to look at the development works and discuss how the Territory regulates the gas industry with representatives from the Department of the Chief Minister's Major Projects team and the Department of Resources.

The EPA Board and Secretariat contributed to a number of events throughout the year. These included:

- attending the TRACK research forum
- hosting a Strategic Assessment information session and luncheon for the Darwin Business Community in November 2010
- presenting at the Darwin Correction Centre International Women's Day celebrations about work opportunities in the environmental sector
- speaking at the Chamber of Commerce 2011 Summit to discuss sustainability
- opening the 'Water in the Bush' conference proceedings in March 2011 and

- opening the Royal Australian Chemical Institute and the Society for Environmental Toxicology and Chemistry's Australasia Chapter EnviroTox 2011 conference at the Darwin Convention Centre in April 2011.

The EPA continued to coordinate and promote the Environmental Practice, Policy and Law Seminar Series along with partners, Darwin City Council, Minerals Council of Australia (Northern Territory) Environment Centre NT, Environment Defenders Office (NT), and the Environment Institute of Australia and New Zealand.

As part of the series, the EPA hosted a seminar in March 2011 on 'Advancing Sustainability in Infrastructure – better ways to design, deliver and operate infrastructure', presented by Australian Green Infrastructure Council CEO, Mr Doug Harland.

Another seminar in April, 'Sustainable Mining – what does it look like?', presented by Monash University's Dr Gavin Mudd, was followed with a discussion panel on the topic with panellists the EPA's Executive Director,



Mrs Jacinta Stanford, Executive Director of the Minerals Council Australia, NT Division, Mr Peter Stewart, and Acting Chief Executive, Department of Resources, Mr Alister Trier.

Appreciation of the Seminar Series by government, businesses and the community has been demonstrated through increasing attendance and positive feedback.

For the second year, the EPA was a support partner of the 2011 Tropical Garden Spectacular and Top End Sustainable Living Festival on 4 and 5 June 2011. The festival provided an opportunity to increase public awareness of

the EPA, provide a face-to-face opportunity for the public to discuss environmental issues and increase thoughtfulness of caring for the environment through the calico drawing activity.

The EPA Board held public discussions (to coincide with a regular board meeting) to develop networks and relationships while in Alice Springs in September 2010. A public forum and meetings with Solar Cities and the Central Land Council provided the opportunity to discuss the collective work being undertaken for a sustainable future in the Red Centre.

The EPA distributed an e-newsletter in February 2011 to an Australia-wide EPA subscriber list of 390 people and posted media releases, event information and final inquiries and reports on the website to promote its work and functions.

The EPA also advertised on a number of occasions in the NT News and Centralian Advocate to promote and support events and invite and encourage input into various environmental impact assessments.





future priorities

The increased powers assigned to the EPA with amendments to the *Environment Protection Authority Act* that commenced in April 2010 and April 2011, and the appointment of a new EPA Board for the period 2011-13, made a review of the previous EPA Strategic Plan timely. The reviewed plan will be released in the first quarter of the 2011-12 financial year, and will provide direction for the EPA's work for the 2011-13 period.

Advising government on legislative reform, where it is deemed necessary to minimise adverse environmental impacts of development, will remain a priority. This is fundamental to the EPA's goal of promoting ecologically sustainable development throughout the Territory.

Similarly, the mandate to provide advice on emerging issues and on best-practice environmental policy will remain unchanged. The EPA will continue to be guided by community needs and expectations, and where the Board considers appropriate, provide strategic responses to government and the public.

The EPA will investigate the challenge of ensuring that the community opinion it acts upon is both representative and inclusive. Good environmental decisions should ultimately benefit all people in the Territory, directly or indirectly. The EPA is aware of the importance of managing all issues holistically.

The EPA will increase its emphasis on acknowledging Indigenous Territorians in its deliberations, whose traditional knowledge spans a time in which the predicted effects of climate have been experienced. The EPA will forge community engagement strategies to work with Indigenous communities for environmental protection and economic development in remote areas.

Participation in the Government's reform of the *Environmental Assessment Act* will also remain a priority. A suite of legislative reviews that progress ecologically sustainable development are proposed, including the *Water Act*, *Pastoral Land Act* and *Native Vegetation Act*. An independent EPA assessment will hopefully contribute to reform in a realistic and pragmatic way.

The EPA will continue to independently review and assess agency responses to environmental incidents, such as the copper spill in Darwin Harbour and the fuel spill in Gove. These reviews invariably highlight areas in which our joint responsibility to manage adverse environmental impacts can be improved. The EPA will continue to work on refining its own internal procedures and guidelines to facilitate such assessments in a timely and efficient way.

Building stronger relationships with government, businesses and the broader community that have a special interest in ensuring development is ecologically sustainable will remain the focus of the EPA.



reporting

Our Activities

The Northern Territory Government's Budget Paper No. 3 2010-11 outlines the performance measures for all Northern Territory Government agencies. For the purposes of financial administration in the reporting period, the Environment Protection Authority was an output group within the Department of Natural

Resources, Environment, The Arts and Sport. For all other purposes, the EPA was an independent advisory body and was not subject to the direction of the Minister.

Performance Measures

The EPA board met four times during the reporting period.

The activities of the EPA were amended by changes to the

Environment Protection Authority Act, which came into effect on 28 April 2010. While an attempt was made to reflect these changes in the EPA 2009-10 Annual Report, this year represents the first opportunity to report accurately against these new activities. Reporting on the activities under amendments that commenced on 28 April 2011 will commence in the 2011-12 Annual Report.

Output Environment Protection Authority		10-11 Estimate	10-11 Actual	11-12 Estimate
Quantity	Projects and Reviews Commenced <i>*as defined in Section 5 of the Environment Protection Authority Act</i>	3	3	2
	Discussion papers and reports released	2	2	2
	Informal advice provided to Government	n/a	4	4
	Final advice provided to government <i>*as defined in Section 24 of the Environment Protection Authority Act</i>	2	3	2
	Formal public/stakeholder events held	8	8	8
	Received referrals from public and government	2	2	4
	Unique visitors to the EPA website	5000	6,932	5000
Quality	Stakeholder satisfaction with activities and advice <i>*stakeholders include government, environmental organisations, business groups and the wider community. The legislative powers review has distracted attention from the need to review satisfaction with the EPA. A stakeholder survey will be held in the next 12 months when the new functions are all bedded down.</i>	70%	80%	80%
Timeliness	Reports delivered within identified delivery dates	100%	100%	100%



Financial Reporting

The 2010-11 approved budget for the Environment Protection Authority was \$1 475 000.

The budget for 2011-12 is \$1 454 000. This represents an actual reduction of \$21 000, which was depreciation as payable under the Department of Natural Resources, Environment, The Arts and Sport.

