

ISSUES PAPER

**REVIEW OF THE WASTE MANAGEMENT AND
POLLUTION CONTROL ACT AND THE LITTER ACT**

15 September 2014

Northern Territory Environment Protection Authority

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Darwin

Northern Territory 0801

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Message from the Chair

Part of the role of the Northern Territory Environment Protection Authority (NT EPA) is to provide advice to the Minister for Lands, Planning and the Environment on environmental legislation and achieving appropriate and effective environmental policy and management.

Significant concerns with the *Waste Management and Pollution Control Act* (WMPC Act) were publicly highlighted for the first time in 2010 with a number of pollution incidents occurring in the Darwin region.

In 2013, the NT EPA was given responsibility for administering the WMPC Act and the *Litter Act*. A five year review of the WMPC Act was due in 2012 but never completed.

The NT EPA has determined to undertake a comprehensive review of the WMPC Act and the *Litter Act* and the role of these acts in managing the impacts of waste and pollution on the Northern Territory environment.

We are releasing this consultation paper as the first step in the review process. We have identified a number of issues for specific comment and seek your comments on any aspect of the Acts and their role in the Northern Territory's environmental management framework. Your broad responses will help us to frame a more specific discussion paper and eventually advice to the Minister.

I encourage you to respond to this paper and to take an active role in defining the Northern Territory's environmental framework into the future.

Dr Bill Freeland

Chair, Northern Territory Environment Protection Authority

Get involved

We, the Northern Territory Environment Protection Authority (NT EPA), are seeking your comments on the WMPC Act and the *Litter Act*. Copies of the Acts and accompanying Regulations can be downloaded from <http://www.nt.gov.au/dcm/legislation/current.html>

Your feedback will assist us to develop advice to the Minister for Lands, Planning and the Environment on improvements to Northern Territory legislation. We raise a number of specific questions in this document and welcome your response to those questions as well as your comments on any part of the operation of the WMPC Act or *Litter Act* or the accompanying regulations.

You can provide your feedback by sending your written response, preferably by email, to nTEPA.consult@nt.gov.au or by mail to:

GPO Box 3675
Darwin NT 0801

Key dates

Phase 1:	Release consultation paper for comment	September 2014
	Submissions close	October 2014
Phase 2:	Analyse feedback, identify issues and develop policy positions	November 2014 – March 2015
Phase 3:	Release discussion paper	June 2015
	Submissions close	August 2015
Phase 4:	Analyse feedback, finalise policy positions. Prepare advice for the Minister	August 2015 – October 2015
Phase 5:	Forward advice to the Minister	November 2015

Note: Dates for phases 3 to 5 are provisional.

Confidentiality

It is important that you clearly indicate if you wish your submission to be treated as confidential or anonymous.

All submissions will be treated as public documents unless you clearly indicate the contrary by marking all or part of the submission as 'confidential'.

Submissions, including any information of authors and/or other third parties contained in the submission, will be published on the NT EPA website. If your submission contains the personal information of any third party individuals, please indicate on the cover of your submission if they have not consented to the publication of their information.

Under the *Northern Territory Environment Protection Authority Act*, the NT EPA is required to make copies of its advice to the Minister for Lands, Planning and the Environment publicly available. The Minister is required to table the advice in Parliament.

Your submission is likely to form part of the advice to the Minister. In order to exempt your submission from publication, you will need to advise the NT EPA that you wish it to be kept confidential and the reasons for your request.

A request made under the *Information Act* for access to a submission marked confidential will be determined in accordance with that Act.

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1 Introduction

The *Waste Management and Pollution Control Act* (WMPC Act or the Act) was introduced in 1999 to manage the impacts of waste and pollution on the Northern Territory environment. A number of concerns with the Act have been identified since its introduction. Some of these concerns are minor and have had little impact on the overall operation of the Act. Other matters represent an unacceptable risk to the environment as they prevent us from taking action to enforce the Act.

A review of the WMPC Act was undertaken in 2007. That review focussed on operational matters, such as the number of licences issued, rather than strategically considering how effective the Act was in delivering on its objectives. A second review, due in 2012, while never completed, also focussed on operational matters.

The *Litter Act* was originally introduced as the Litter Ordinance in 1972 and has not been substantially reviewed or amended since 1990. An internal review, commenced in the mid-2000s, was never completed.

1.1 Purpose of the review

We have decided to conduct a review of the WMPC Act and the *Litter Act* in accordance with our responsibilities under Part 3 of the *Northern Territory Environment Protection Authority Act* (NT EPA Act) to provide advice to the Minister for Lands, Planning and the Environment (the Minister) on:

- achieving appropriate and effective environmental policy and management for the Northern Territory; and
- legislation related to the environment.

Our review will consider:

- the role and purpose of the WMPC Act and the *Litter Act* within the broader Northern Territory environmental management framework.
- improvements that can be made to the Acts to assist the Northern Territory achieve ecologically sustainable development.
- non-legislative alternatives that may be appropriate to address the issues raised during the review.

1.2 How we intend to conduct the review

The review will be conducted in a number of stages.

In this first stage of the review, we are seeking information on a limited number of topics relevant to the management of wastes and pollution in the Northern Territory. This paper is designed to gather information on these limited topics. It has been developed using information gathered from other jurisdictions and various submissions received by the Northern Territory Government in recent years.

This paper is deliberately limited to the current situation in the Northern Territory, supplemented with overviews of how other jurisdictions have approached the various issues. The paper does not examine the available approaches in any detail, nor does it identify what we may consider to be the pros or cons of the various approaches. We hope that by presenting information in this way, you will be encouraged to identify and propose new and innovative solutions to the issues raised.

In responding to this paper you are encouraged to raise any issues or concerns you may have with the WMPC Act and *Litter Act*; and to provide proposals or solutions to address those concerns.

It would assist us if, as part of your response, you provided information about your organisation, and how the WMPC Act or the *Litter Act*, or changes to these Acts may affect you.

We will use the information provided in response to this paper in the next stage of our review. In the next stage of the review we will develop a comprehensive discussion paper. The discussion paper will address in further detail the issues raised in this paper and other matters that you identify, or which have been identified through other fora, and provide proposals or options for reform of the WMPC Act and the *Litter Act*.

As our final step in the review process, we will use the information received throughout the review to develop the advice to the Minister mentioned above.

2 WMPC Act

2.1 How it works

The WMPC Act has two central functions designed to protect the Northern Territory environment:

1. a general framework for protecting the environment from pollution and waste, including offence provisions and enforcement tools; and
2. a licensing and approvals regime for specified activities.

The Act is designed to enable businesses to decide how best to set about meeting the desired environmental outcomes rather than dictating particular management practices. That is, it seeks the integration of sound environmental practices into the general management of a business without specifying what those environmental practices should entail.

In general terms, the WMPC Act does not manage any matter that can be managed under the *Marine Pollution Act*, or apply to contaminants and wastes that are confined on areas of land on which mining or petroleum activities are occurring¹. The WMPC Act is often referred to as having 'off tenement' or 'off lease' application. The provisions are commonly known as the 'section 6 exemptions'.

If contamination or waste leaves an area of land on which mining or petroleum activities are occurring, the WMPC Act applies to all of the area impacted by the contaminant or waste, regardless of whether it is on or off the area of land on which the mining or petroleum activity².

All persons conducting activities that are likely to cause pollution or generate waste, except those covered by the section 6 exemptions, must take all practicable and reasonable measures to prevent or minimise pollution and reduce the amount of waste.

¹ Refer sections 6(2), (3), (4) and (8) of the WMPC Act

² Refer section 6(5) of the WMPC Act

In practice, industry, both licensed and unlicensed, has typically relied on environmental management plans to ensure they meet their environmental obligations under the Act.

2.2 Issues with the WMPC Act

The WMPC Act contains a variety of *proactive* and *reactive* tools that can be used to manage the impacts of waste and pollution on the environment.

Proactive tools include opportunities to develop Environment Protection Objectives (EPOs) and the licensing scheme. Reactive tools include offences and associated penalties, audits, compliance plans, and pollution abatement notices (PANs).

With the exception of licensing, in practice, our approach to waste and pollution management to date has been primarily reactive, relying on the reactive tools, rather than proactive ones. In part this is due to the limited nature of proactive tools available under the Act.

Specific concerns that are highlighted in this paper include:

1. the extent to which the WMPC Act can prevent pollution generated outside the Northern Territory from impacting inside the Northern Territory;
2. the WMPC Act's approach to reuse and recycling initiatives, including a general failure to recognise that many 'wastes' are useful resources that can be beneficially reused;
3. the WMPC Act's ability to manage land contamination;
4. reporting of incidents;
5. the approach to, and extent of, the licensing and approvals regime;
6. the approach to drafting of offence provisions, which limits our ability to take enforcement action under the Act; and
7. opportunities for public participation in decision making.

2.3 Consultation matters

Without limiting the scope of the review, your comments are sought in response to the following specific issues with the WMPC Act.

2.3.1 Addressing pollution resulting from another jurisdiction

Generally, a person is not subject to rules and laws outside of the jurisdiction in which they live or conduct their business activities. This is an important issue for environmental law as pollution or waste that is generated in one jurisdiction can have damaging consequences in another jurisdiction.

The WMPC Act does not explicitly recognise that a person conducting an activity outside of the Territory can be prosecuted for the damage caused by that activity in the Territory. Division 7 of Part IIAA of the *Criminal Code Act* extends the application of a law of the Territory that creates an offence beyond the territorial limits of the Territory (and Australia) if the required 'geographical nexus' exists for the offence. Under section 43CA of the *Criminal Code Act*, a 'geographical nexus' exists where an 'offence is committed completely or partly in the Territory, whether or not the offence has any effect in the Territory' or 'the offence is committed completely outside the Territory (whether or not outside Australia) but has an effect in the Territory'.

Under section 43CC of the *Criminal Code Act*, the geographical nexus is presumed but can be rebutted by evidence to the contrary.

To ensure that appropriate action can be taken to reduce the environmental impacts of pollution or waste entering into their jurisdictions, New South Wales, Victoria and Queensland have adopted explicit provisions within their environmental protection acts to create offences for persons that cause environmental harm to the State by conduct engaged in outside of the State. The Australian Capital Territory is considering adopting similar provisions.

1. Should the Act contain explicit provisions to ensure that it applies to activities conducted outside the Territory that cause damage to the Territory's environment?

2.3.2 Improving waste management

The WMPC Act includes objectives to achieve protection of the environment through avoiding and reducing the generation of waste; increasing the reuse and recycling of waste; and effectively managing the disposal of waste³, however with the exception of the licensing of landfills and activities associated with the handling of 'listed wastes'⁴, the Act contains no specific provisions to support these objectives.

In 2011 the Northern Territory introduced a ban on plastic bags and in 2012 it commenced a container deposit scheme⁵. These actions are directly targeted at increasing recycling and resource recovery while reducing litter, but only address specific waste streams. Other improvements in waste management, recycling and resource recovery are being pursued through policy initiatives such as the Northern Territory Waste Strategy (currently under development).

In contrast, most other Australian jurisdictions have adopted legislative reforms to assist the drive for improvements in waste management practices. As part of these reforms, most jurisdictions have adopted the waste management hierarchy, an internationally accepted framework for prioritising and guiding efforts to manage waste. The framework describes the preferred order for managing waste and resources by ranking waste avoidance and reduction as optimal approaches, followed by reuse and recycling, with disposal as the least preferred approach.

Australian jurisdictions have tended to focus on 'reducing waste' and 'recovering resources'. Internationally there has been greater focus on only using the term 'waste' when the item is destined for disposal and classifying items at all other times as 'materials'⁶ or 'resources' to take advantage of positive associations with those words rather than the more negative associations with 'waste'.

2. Should the Northern Territory incorporate the waste management hierarchy into the Act? How could the hierarchy be used to encourage the minimisation of waste generation and/or improvements in reuse and recycling?

³ See section 5(a)(iv), (v) and (vi)

⁴ 'Listed wastes' are specified in Schedule 2 of the Waste Management and Pollution Control Regulations.

⁵ See the *Environment Protection (Beverage Containers and Plastic Bags) Act*.

⁶ United States Environment Protection Authority. 2003. Beyond RCRA: Waste and materials management in the Year 2020, Publication EPA530-R-02-009, April 2003, p.12

3. How important is language in encouraging reuse and recycling? Would 'materials' or 'resource' management or similar phrasing change your perceptions about, and approach to, reuse and recycling?
4. What may be some of the impediments or hindrances to improving reuse and recycling in the Northern Territory? How could these impediments or hindrances be addressed?

The WMPC Act requires a person who is collecting, transporting, storing, recycling, treating or disposing of a listed waste on a commercial or fee for service basis (or who is operating premises associated with any of these activities) to hold a licence (generally referred to as 'listed waste handling activities')⁷. 'Listed wastes' are specified in Schedule 2 of the Waste Management and Pollution Control Regulations. There are no thresholds placed on the amount of waste that must be handled before a licence is required, and there is no differentiation between the risks posed by different types of wastes.

5. What types of waste management activities should require a licence?

In order to meet our obligations under the *National Environment Protection (Movement of Controlled Waste Between States and Territories) Measure 1998*, we require waste handling contractors to report the amounts of listed waste being transported interstate. We also require licence holders to submit a report of the amount of listed waste handled during each year.

Our concentration on listed waste means that we do not collect any data or information on the majority of the waste streams⁸ generated, disposed of, and recycled, across the Territory. This limits our understanding of the extent of the Northern Territory's waste 'problem' and inhibits our ability to undertake appropriate waste management planning activities.

6. How can we improve our knowledge about the type and amount of wastes being generated, reused and recycled in the Northern Territory?

2.3.2.1 Waste levies

A levy is a fee imposed across a group of businesses or consumers and is equivalent to a tax⁹. Levies are a generalised charge directed at a particular industry or business group. Most jurisdictions have introduced levy programs aimed at providing a financial incentive for industry to implement waste avoidance, reuse and recycling initiatives. The most common levies are imposed on landfills to improve recycling and resource recovery and reduce the amount of waste being disposed of at landfill.

Most landfill levy programs apply to a 'regulated' area; normally comprising landfills within large metropolitan areas or accepting waste from metropolitan areas. Where programs are specified as applying 'State-wide', there are exemptions for smaller

⁸ Including construction and demolition waste, green waste and municipal waste streams.

⁸ Including construction and demolition waste, green waste and municipal waste streams.

⁹ Department of Finance and Administration. 2005. *Australian Government Cost Recovery Guidelines*, Finance Circular No 2005/09, Australian Government, p.22

landfills or those servicing smaller populations¹⁰. Generally landfill levy programs include exemptions for certain types of waste, including waste generated through a natural disaster.

Governments apply the proceeds of the levies to a range of environmental programs, particularly those aimed at reducing waste and improving environmental sustainability.

7. Should the Territory Government consider imposing levies? To what types of activities or wastes would the levy be applied?
8. What other infrastructure and industries would improve opportunities for recycling and reuse? Would these be required before a levy could be imposed?

2.3.3 Improving contaminated sites management

A 'contaminated site' is a site at which hazardous substances (commonly inorganic compounds such as metals and asbestos, and organic compounds such as petroleum hydrocarbons¹¹) occur at concentrations above background levels and where an evaluation of the site indicates it poses, or is likely to pose an immediate or long term hazard to human health or the environment¹². Contaminated sites are most likely to be a result of activities linked to industry¹³, agriculture and commerce, although naturally occurring materials, such as mineralised rock and soils may also be a source of concern in certain localities depending on the intended use of the land¹⁴.

All jurisdictions, except the Northern Territory, have developed a legislative framework for the identification, registration, remediation and ongoing management of contaminated sites, supported by the identification and assessment processes specified in the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (Site Contamination NEPM).

We use the Site Contamination NEPM to identify and assess contaminated sites, where these sites come to our attention. This usually occurs because we have received a report about a pollution incident which results in our identifying a contaminated site, or

¹⁰ For example, the levy program applies to all metropolitan and regional areas of Victoria, however does not apply to landfills servicing a population of less than 5 000 people (section 50T *Environment Protection Act 1970*).

¹¹ National Environment Protection Council. 2013. *Decision Regulation Impact Statement: Amendment of the National Environment Protection (Assessment of Site Contamination) Measure*, Standing Committee on the Environment and Water, p.1

¹² Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites, January 1992

¹³ Including, for example, petrol stations, manufacturing plants and other types of industrial activities.

The term 'industry' may also include mining and petroleum recovery activities. In the Northern Territory site contamination associated with these activities is managed through specific mining and petroleum legislation.

¹⁴ Australian and New Zealand Guidelines for the Assessment and Management of contaminated Sites, January 1992

because contamination is identified as part of an assessment of an application under the *Planning Act* or the *Environmental Assessment Act*.

Unlike some other jurisdictions, we do not have a register that identifies all known or suspected contaminated sites, and many potentially contaminated sites, particularly legacy sites, are not captured through the current processes. As a result, clean sites can be unintentionally contaminated through, for example, the movement of contaminated soil from one area to another or by contaminants leaching into ground or surface water if contaminated soils are incorrectly located or inappropriately covered. Once identified, contaminated sites may be managed by issuing a Pollution Abatement Notice (PAN) and registering that PAN on the land title.

In 2013, the Northern Territory Government introduced a mining levy and a Mining Remediation Fund, partly to meet the costs of rehabilitating legacy mining sites and to reduce the impacts of these sites on the Northern Territory's environment.

9. Should the management of contaminated sites be given a greater focus in the Northern Territory?

10. How do you suggest we approach management of potentially contaminated sites?

2.3.4 Reporting incidents

Under section 14 of the WMPC Act a person who is conducting an activity from which an incident causing, or threatening to cause, pollution resulting in material or serious environmental harm occurs must report the incident to the NT EPA within 24 hours of becoming aware of the incident.

There are a number of difficulties with the current section including:

- (a) a lack of clarity over who holds the duty to report an incident and when the report should be made, particularly for the mining and energy industries which also have obligations to report under the approving (or authorising) legislation;
- (b) difficulties in determining when an incident is to be reported, particularly for incidents which 'threaten' to cause harm which may include 'near miss' incidents;
- (c) general difficulties in enforcement due to the drafting of the provision.

There may be an incentive for operators to avoid enforcement action by not reporting incidents until any environmental harm which may have occurred has dissipated.

Failures to report incidents, either at all or in a timely manner, has significantly hampered our investigations as we have been unable to determine the extent, if any, of environmental impacts arising from these incidents.

Other jurisdictions have adopted hierarchy's that identify who has the responsibility to report an incident and in what circumstances.

11. How can we improve the WMPC Act to ensure that the right incidents are reported by the right person at the right time?

2.3.5 Addressing discharges and emissions

Our approach to the management of emissions and discharges needs to be designed in consideration of the Northern Territory's national commitments and obligations. These commitments include:

- the Intergovernmental Agreement on the Environment;
- the *National Strategy for Ecologically Sustainable Development*;

- National Environment Protection Measures; and
- the National Water Quality Management Strategy.

Our current approach to managing the impacts of waste and pollution on the Northern Territory environment relies on a limited licensing regime, a general duty to protect the environment, and industry self-regulation.

In broad terms, licenses are currently required, for businesses operating landfills servicing more than 1 000 people; transporting, collecting, storing or managing certain (“listed”) wastes, other than for the purpose of a sewage plant; operating liquefied natural gas (LNG) facilities; and operating the onshore gas plant as part of the Blacktip Gas Project (collectively referred to as ‘scheduled activities’).

The licensing regime is the most proactive tool we have to minimise the generation of waste, and to impose standards and conditions to minimise the potential for pollution, by individual business owners.

Licenses establish the specific requirements that a business must meet in order to reduce the amount of waste they produce or their potential pollution of the environment. In the absence of a licence, we are restricted to providing general parameters in which businesses should operate, and relying on reactive compliance and enforcement tools such as pollution abatement notices or issuing infringement notices.

Since the licensing scheme was introduced, there have been changes to the nature and extent of industry in the Northern Territory, and the scheme may no longer effectively and appropriately manage the potential impacts, including cumulative impacts, to the Northern Territory’s environment.

Most Australian jurisdictions have implemented extensive licensing regimes based on types of activities that are expected to pose a risk to the environment. This can result in a long list of activities focussed on the *nature* of the activity and not necessarily on the *risk* posed to the environment by particular projects. This may be of particular concern where lists are not updated to reflect emerging industries or changes in industry practice and technology that alter the risks posed by particular industries.

Many developing nations, without strong regulatory frameworks, rely on alternate methods to licensing, including voluntary agreements, industry codes and improvements through social pressures, such as requiring the publication of emissions data.

New Zealand has adopted an effects based licensing regime for all emissions and discharges to the environment. Thresholds for emissions and discharges and certain ‘allowable activities’ are specified in environmental standards, regional plans and regulations made under the *Resource Management Act 1991*.

12. How do you suggest we approach management of emissions and discharges to the Northern Territory environment?

13. What are the benefits or costs associated with your suggested approach?

Many forms of emissions and discharges to land are not regulated under the existing Northern Territory legislative framework. The regulation of emissions and discharges occurs in the following ways:

- Discharges of waste to water can be regulated in one of five different ways:
 1. through a waste discharge licence issued under the *Water Act*,
 2. through a permit to discharge through an underground bore issued under the *Water Act*,

3. through the *Marine Pollution Act*, if the discharge is from a ship and in the marine environment;
 4. through the *Public and Environmental Health Act* and regulations if the health and wellbeing of individuals or communities may be impacted; or
 5. under the WMPC Act if the discharge is related to a scheduled activity.
- Discharges to land can be regulated in two ways:
 1. under the WMPC Act, if the discharge is related to a scheduled activity; or
 2. under the *Public and Environmental Health Act* and regulations, if the health and wellbeing of individuals or communities may be impacted; and
 - Emissions to air can only be regulated if they originate from a licensable activity under the WMPC Act.

Discharges of wastes and pollution to land and water, if contained within the lease areas of mines, petroleum sites or pipelines, are regulated under specific mining and petroleum legislation.

14. How effective is the Northern Territory's current regulatory regime in managing emissions and discharges?
15. Are there opportunities to more closely align the management of emissions and discharges with the risk posed by the emission or discharge?
16. What types of emissions and discharges should be managed under the WMPC Act?

'Diffuse pollution sources' refers to the various sources of waste or pollution that may end up in the same receiving body. Sources include run-off from roads, houses and commercial areas, run-off from farmland, and seepage into groundwater. Diffuse pollution sources may be individually minor, but collectively significant.

There is limited capacity within the WMPC Act to manage diffuse sources of pollution, with the primary management tool being industry's compliance with its general duty to minimise pollution and reduce waste¹⁵.

Compliance tools, such as PANs and directions by Authorised Officers, can be used to successfully manage individual point sources of pollution, but may not be as effective where a point source cannot be identified.

The draft *Stormwater Strategy for the Darwin Harbour Region* has been developed as a policy measure to assist in managing diffuse pollution sources impacting Darwin harbour.

17. How can we best manage diffuse pollution sources?
18. How effectively can your proposed approach to the management of emissions and discharges manage diffuse pollution sources?

¹⁵ See section 12 of the WMPC Act.

Emissions and discharges can continue long after an activity ceases. Many licensing programs require an ongoing activity in order for the licence to be issued. To ensure ongoing management of sites once specific activities have ceased, Western Australia and Queensland have introduced 'closure notices' which are issued where ongoing investigation, monitoring or management is required following the expiry or revocation of the relevant licence.

Under section 36 of the Act, we may require a person to provide a financial assurance as a condition on the grant of an approval or licence. Financial assurances ensure funds are available to rehabilitate a site, regardless of whether the operator remains financially viable. They are similar to securities under the *Mining Management Act*.

19. How can we ensure appropriate management of a site continues once an activity has ceased?

2.3.6 Improving enforcement

There are a number of non-statutory and statutory tools that we can use to quickly and flexibly respond to incidents that may impact the environment.

Non-statutory tools include education and other advisory activities that may assist to prevent incidents occurring and can be used to address minor non-compliances with the WMPC Act where these non-compliances have not resulted in environmental impacts.

Statutory tools include Authorised Officer directions, written warnings, PANs, the issue of infringement notices or prosecutions. They are applied in situations where a stronger response than can be achieved through a non-statutory tool is required.

In addition to the statutory tools listed above the WMPC Act includes the following:

- compliance plans which establish a plan of works or actions to be undertaken by a particular business in order that they can achieve compliance with the WMPC Act;
- performance agreements, which are contractual agreements with businesses to undertake a program to protect or restore the environment; clean up pollution; or improve waste management practices; and
- works authorisations which allow us to take action to prevent or clean up pollution.

A number of other jurisdictions have adopted enforceable undertakings which seek to protect the environment by delivering timely and cost effective responses to environmental breaches. Undertakings provide an alternative to prosecution. The undertaking is given by the alleged offender who undertakes to cease the offending conduct and take certain actions to remedy the alleged breach. As a general principle, the specific undertakings given should deliver benefits that go beyond mere compliance with the law. Failure to comply with the undertaking creates an offence.

20. What compliance and enforcement tools should be included to ensure that the WMPC Act can be appropriately enforced?

The WMPC Act contains a number of offences related to pollution of the environment that cause serious or material environmental harm; environmental nuisance and storage of contaminants or waste. With the exception of the environmental nuisance offence all offences have two levels – the higher penalty being for instances where it can be proved the action giving rise to the offence was intentional.

In 2010 following a series of environmental incidents, the former Department of Natural Resources, Environment, the Arts and Sport sought legal advice about taking

enforcement action under the WMPC Act. That advice identified numerous issues with the enforcement tools under the Act.

The offences rely on complex, multi-faceted definitions of environmental nuisance, material environmental harm and serious environmental harm, as well as broad definitions of pollution, contaminant and waste. The reliance on environmental harm as an element of environmental offences in the criminal context creates a significant burden of proof for the prosecution which can be difficult, costly and time consuming to satisfy through scientific evidence.

To address the difficulties associated with the burden of proof, South Australia and Tasmania have determined that ‘environmental harm’ is a consequence of pollution. That is, proof that pollution has occurred is sufficient to determine that environmental harm has occurred. The Australian Capital Territory deems certain pollutants to have caused harm if the pollutant is in excess of a prescribed amount or is a prescribed pollutant. The Australian Capital Territory also deems particular persons to be responsible for land contamination.

Across Australia the definition of ‘environmental harm’ (or its equivalent¹⁶) varies:

- Queensland and South Australia are similar to the Northern Territory, including both ‘actual’ and ‘potential’ harm;
- New South Wales, Victoria, Tasmania and the Australian Capital Territory are limited to ‘actual’ harm; and
- Western Australia incorporates both ‘actual’ and ‘potential’ harm but has an additional requirement for the environment to have been ‘altered’ by the action alleged to have caused, or the potential to cause, the harm.

Only two prosecutions have been brought under the Act since its commencement in 1998. Both prosecutions have focussed on environmental nuisance rather than serious or material environmental harm.

21. Do you have recommendations on the types of offences that should be included in the WMPC Act?

22. How could the offences be improved to ensure that the WMPC Act can be appropriately enforced?

A range of sanctions and remedies can be applied to deter breaches of the WMPC Act including: financial penalties (fines), imprisonment, and cost orders.

Other jurisdictions have adopted additional remedies including:

- adverse publicity orders which require the offender to publicise their offence and orders of the court;
- remediation orders requiring offenders to remediate or restore areas impacted by waste or pollution because of the offenders actions; and

¹⁶ New South Wales refers to ‘harm to the environment’ while Victoria uses the term ‘environmental hazard’.

- restitution orders which require offenders to remediate or restore areas not directly impacted by waste or pollution caused through their actions. These orders are used where it is not possible or appropriate to remediate the area actually impacted by the offender's behaviour.

23. What sanctions and remedies should be available under the WMPC Act?

3 Litter Act

3.1 How it works

The *Litter Act* is described simply as an Act relating to litter.

In common language litter refers to waste or rubbish left in a public place which detrimentally affects the amenity or use of the place. Litter can range from small items of packaging to drink containers to larger items such as abandoned vehicles or parts. Depositing large items, or large amounts of waste, is commonly referred to as 'illegal dumping'.

Litter is most often discussed within the context of being 'unsightly', but it can cause a range of environmental, social and economic impacts. Litter may impact soil and water quality, may be hazardous to people and wildlife (for example through injury caused by glass or the entanglement in or consumption of plastic material), and may create refuges for vermin resulting in public health concerns. Litter has the potential to negatively impact businesses and employment where tourism is a significant component of the local economy.

In general terms, the *Litter Act* only applies to Crown land unless its application is specifically extended to municipal or leasehold areas. The Act has been extended to include Darwin, Palmerston, Katherine and Alice Springs municipal areas and lease areas at Nhulunbuy.

The *Litter Act* establishes offences for depositing litter or dead animals on public places or Crown land. To assist in enforcing the Act, where a vehicle is involved in the offence, the *Litter Act* deems owners or drivers of a vehicle to have committed the offence. The Act also establishes an infringement notice scheme and gives limited powers to Litter Officers to direct people under the Act.

The maximum penalty for an offence under the Act is 15 penalty units (currently \$2 160). The infringement notice penalty is \$50.

The *Summary Offences Act* also contains a limited number of waste and litter related offences, including offences related to the dumping of dead animals, the maintenance of yards so as not to cause a nuisance, and requirements to ensure that refrigerators and similar containers do not cause a trap hazard¹⁷.

3.2 Issues and concerns

The *Litter Act* does not provide a contemporary holistic litter management scheme. The Act addresses limited litter related matters and is difficult to enforce. Penalties are low and do not establish a level of deterrence.

¹⁷ See sections 85, 78 and 65AA of the *Summary Offences Act*

3.3 Consultation matters

Without limiting the scope of the review, your comments are sought in response to the following specific issues in regards to litter management.

3.3.1 Advertising material

Advertising material includes flyers, circulars, promotional material and similar publications distributed freely to the community for commercial and other promotional purposes. It includes publications addressed 'to the occupier' or 'to the household'.

The Australian Catalogue Association has adopted a Code of Practice for the delivery of advertising material. The Code of Practice is subject to self regulation through the Association's Distribution Standards Board. The Code of Practice is designed to ensure that advertising material is delivered so as not to cause litter or waste.

In other jurisdictions there have been community complaints and feedback that, despite the Code of Practice, large quantities of advertising material become litter or unwanted waste. Most governments have responded to these complaints by introducing provisions to manage the delivery of advertising material. Provisions generally limit the placement of advertising material to mail boxes, under doors, or other areas identified for the receipt of mail or newspapers; and prohibit the placement of material on car windscreens, fences and other places where it is likely to become litter.

In the Northern Territory, some local Councils¹⁸ have introduced by-laws that manage advertising material in public places. These by-laws regulate the handing out of advertising material and the placement of such material on power poles, signposts and similar.

24. Is littering a problem in your community?

25. As a municipal or shire council, do you want littering provisions to apply within your area of responsibility?

26. Is the placement of advertising material a problem in the Territory? Is the current regulation sufficient? Is additional regulation required?

3.3.2 Illegal dumping

In the Northern Territory, the management of illegal dumping is complicated by a small population and the large areas of land over which there can be only minimal oversight.

The Department of Lands, Planning and the Environment (DLPE) has identified a number of 'hot spots' where illegal dumping occurs on Crown land and it incurs costs associated with removing the waste. DLPE reports that initiatives such as gating and fencing of Crown land has been of limited effect as these are often vandalised to enable illegal dumping to occur. Enforcement has proven difficult as the 'owner' of the waste material can be difficult to identify and the illegal dumping activity is often not detected for some time after it has occurred.

To address difficulties associated with being able to identify alleged offenders, particularly those associated with illegal dumping, both Queensland and Tasmania have

¹⁸ See by-laws of the Darwin City Council, Barkly Shire Council (in respect of Tennant Creek only) and the Darwin Waterfront Corporation. Palmerston City Council by-laws manage advertising signage only.

introduced provisions that allow third parties to report incidents of littering and for the regulatory authority to use this information to issue infringement notices or commence enforcement proceedings.

27. Would provisions such as those in Queensland and Tasmania which make it easier for the public to participate in litter enforcement activities assist to manage illegal dumping and litter?
28. Should the Northern Territory 'deem' certain members of the public to be responsible for litter?
29. What other actions or incentives could be implemented to reduce the incidences of illegal dumping?

4 Environment protection acts

Environment protection acts have been adopted by most jurisdictions to:

- establish an authority with responsibility for environmental protection (EPA provisions);
- enable the effective management of pollution to land, water or air through licensing and enforcement provisions;
- manage litter; and
- specify a method for undertaking environmental impact assessments.

Some environment protection acts contain provisions aimed at addressing waste and resource recovery, but in many jurisdictions these issues are the subject of specific legislation.

Environment protection acts differ from resource management acts (such as the *Water Act* and *Weeds Management Act*) which are designed to ensure the appropriate use and management of the Territory's natural resources.

Rather than establishing an environment protection act, the Northern Territory has adopted a number of Acts, including the WMPC Act, the *Litter Act*, the NT EPA Act and the *Environmental Assessment Act* to address the various elements of the environmental framework.

30. Should the Northern Territory consider development of a broad environment protection act similar to other jurisdictions? What might be advantages or disadvantages of adopting an environment protection act over issue specific legislation?
31. In addition to matters currently contained in the WMPC Act and *Litter Act*, what other matters could be included in any environment protection act?
32. Are there matters currently contained in the WMPC Act or *Litter Act* that could be better managed through an alternate mechanism, such as policy, rather than through legislation?

5 Local government

Across Australia local governments undertake a wide range of responsibilities such as: issuing building and planning approvals; undertaking low level environmental assessments; managing low level pollution incidents; managing noise (particularly neighbourhood noise) and other nuisance activities, and managing environmental health and food safety matters.

In the Territory, these responsibilities are primarily undertaken by the Northern Territory Government.

Local government responsibilities in the Northern Territory are specified in Part 2.3 of the *Local Government Act*. Generally local government services include: management of roads and street lighting, council buildings and facilities, cemeteries, libraries, public land including parks, reserves and other open spaces, dogs, the collection of waste and litter and management of waste disposal sites. Councils are also responsible for weed and fire reduction activities, training and employment of local people in council operations and the operation of the council.

33. Is there an increased role for local government in the regulation of waste and pollution in the Territory? What is that role?

6 Improving community involvement

The WMPC Act contains few opportunities for community involvement in waste and pollution management.

A person may take civil action or seek civil remedies for any matter managed under the WMPC Act. We are only aware of one person seeking a civil remedy for a matter that may constitute an offence under the Act.

We are required to keep a public register of certain documents including: licences and approvals; pollution abatement notices; and reports of incidents submitted in accordance with section 14 of the Act. Before making an Environmental Protection Objective, the Minister must seek public comment on the proposed Objective.

A person who is directly affected by a decision made under the WMPC Act may request a review of the decision. The body performing the review may be the NT EPA, the Minister or a panel established by the Minister, depending on who made the original decision. For the purposes of the WMPC Act, “a person who is directly affected” is limited to a person who has applied for a decision in relation to a licence or approval and a person who has been directed to comply with a requirement under the Act.

Unlike the *Water Act*, for example, a person who may be indirectly impacted by the decision (such as a downstream licence holder) cannot apply for a review of a decision. Further, there are no opportunities for a person, other than the applicant, to comment on a proposed licence or approval before it is issued.

34. How could enhanced community involvement improve the Northern Territory’s management of waste and pollution and improve environmental outcomes for the Territory?

35. Should the WMPC Act include requirements for the NT EPA to seek public comments on the application for a licence or the proposed conditions of a licence? If so, how could an efficient and effective process operate?

36. Who should be allowed to appeal a decision made under the WMPC Act? What should be the basis for that appeal?

7 Where to next?

All submissions received will be published on our website, unless you advise us that you wish your submission to remain confidential.

Following the consultation period, we will analyse your feedback and comments and produce a detailed discussion paper. The paper will summarise issues that are raised and propose possible solutions.

The discussion paper will be released for public comment prior to our developing advice to the Minister on possible legislative reforms. Submissions received in response to that paper will be published on our website.

The final advice will be tabled by the Minister in the Legislative Assembly and published on our website.

Your submission may also be used to inform us in the development of other policies or strategies to address waste and management needs in the Northern Territory.

7.1 Previous submissions

The Northern Territory Government has received numerous submissions about the WMPC Act over recent years. Those submissions have helped us to identify the issues for this paper and we will consider those submissions as we develop the discussion paper. New submissions will help us to identify whether approaches that have been proposed previously remain appropriate or if there are new or innovative approaches that could be adopted.