

Towards an  
**Environment Protection Authority**  
(EPA) for the Northern Territory

EPA Board report and recommendations June 2007

Professor Gordon Duff  
Professor Donna Craig  
Mrs Judith King



© EPA Board

EPA Board  
PO Box 496  
Palmerston NT  
0831  
[www.nt.gov.au/epaboard](http://www.nt.gov.au/epaboard)

Published June 2007 by the EPA Board.

ISBN 1 920772 50 2

## Contents

Purpose of the report	2
Where should an independent Environment Protection Authority be 'placed' in the landscape?	3
Principles for EPA operations	4
EPA functions	5
EPA structure and governance	8
Biographies	11

## Purpose of the report

On 19 October 2005 the Government established Stage 1 of the Northern Territory's first Environment Protection Agency (EPA).

This involved two key components, the appointment of an independent three-member Board and the reorganisation of the Office of Environment and Heritage to form the EPA program.

The independent EPA Board was asked to consult with the Northern Territory community on a preferred EPA model for final implementation and provide the Minister for Natural Resources, Environment and Heritage with advice on the scope, structure and function of the EPA. The Board would also advise the Minister on the form and content of new environmental legislation.

This consultation took place in May 2006 with information sessions held in Darwin, Katherine, Nhulunbuy, Borroloola and Alice Springs, followed by workshops in the same centres during June and July of 2006. These workshops were attended by Board members in order for the community to have the opportunity to speak directly with the Board. Consultation closed in August 2006, and the Board submitted its report and recommendations to the Northern Territory Government later the same year.

This report is the EPA Board's recommendations in full.

## Where should an independent Environment Protection Authority be ‘placed’ in the landscape?

It is recommended that the Northern Territory Government establishes an Environment Protection Authority (EPA) that can provide a “whole of government” approach by providing independent strategic and practical advice to government about ecologically sustainable development (with a key focus on environmental protection) in the Northern Territory. Specifically, this would involve setting clear objectives, rules, standards and processes (policy statements, guidelines, standards and administrative procedures) that are cross-sectoral, interagency, participatory and scientifically defensible and which promote integration and efficiency.

The EPA should have a clear public profile, and operate in such a way as to engender community confidence in the independence and quality of advice being provided to government. Its capacity to develop advice and recommendations independent of government direction and influence should be beyond question and a matter of public confidence.

The EPA should regularly seek advice and engage with responsible authorities, business, and regional, local and Indigenous communities and organisations so that the proposed strategic role is underpinned by a good understanding of how ecosystem management is perceived and enacted at local and regional levels.

The EPA should have a high level role advising on policy and standard setting and in developing legislative and administrative frameworks. It should promote competence and capacity in managing the Territory environment and in identifying and protecting environmental and other community values. The EPA should be clearly identified, and clearly distinguished from the operational and enforcement aspects of environmental protection and regulation provided by government agencies. These should continue to be the responsibilities of government agencies directly accountable to Ministers and hence the electorate. Duplication of functions and roles should be avoided. The EPA should have a role in identifying any systemic failure, and a role in receiving reports on agency activities in respect of compliance and enforcement.

This will sometimes involve EPA directed meetings, inquiries, reports or studies. In this model it is essential that the EPA has a robust mechanism and control of adequate resources for investigating, monitoring and reporting, and signalling that intervention is required.

In order to be ‘independent’ the EPA should be established by legislation which ensures:

- Appointment of members by Executive Council having considered the recommendations of the Minister. A search and recruitment process to be conducted by a suitably experienced search firm
- The EPA to make recommendations to the responsible (relevant) Minister(s) and Parliament

- The EPA cannot be directed by government in terms of its investigative methods, scope and findings
- The principle of transparency should be fundamental, i.e. make matters public unless there are reasonable grounds not to (for example, through administrative law)
- EPA legislation to take precedence in the event of any conflict with other laws
- Powers to
  - 'call in' government processes in order to provide advice on their adequacy
  - initiate its own investigations and/or inquiries and to accept third party references (see functions section on page 5)
  - require government agencies to provide information
- Capacity and resources to fund its own investigations and reports

## Principles for EPA operations

Recommended principles/aims and objectives of the EPA:

- Protect environmental and community values to ensure the distinctiveness of the Territory environment is maintained
- Provide independent and transparent advice to government based on good quality information; and adopt and promote accountable and timely advice and decision-making processes
- Demonstrate accountability through annual/regular reports to Parliament
- Promote innovative and adaptive sustainable development and triple bottom line accountability (i.e. broad interest) at all levels including capacity building within government and industry
- Foster the principles of ecologically sustainable development, i.e.:
  - 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'

- Enable meaningful participation and engagement across cultures and regions
- Promote best practice and continuous improvement with respect to the principles of ecologically sustainable development
- Promote integration across government agencies, e.g. through multiple approvals/assessments
- Operate efficiently and promote policy and regulatory clarity to avoid duplication and uncertainty
- Existing definition of 'environment' under *Environmental Assessment Act (NT)/Environment Protection and Biodiversity Conservation Act* (Commonwealth) (i.e. includes social and economic as well as biophysical) should be maintained

## EPA functions

It is recommended that the EPA:

- Promotes ecologically sustainable development and best practice environmental management across government, business and the community
- Engages regularly with Territory businesses and communities and promotes community awareness of issues and processes, with particular attention to reaching regional and Indigenous communities
- Provides independent advice to government with respect to:
  - Setting clear objectives, rules, standards and processes (policy statements, guidelines and standards) that are cross-sectoral, interagency, participatory and scientifically defensible and which promote integration and efficiency
  - Regular reviews of government agency processes, within and amongst agencies, with a view to ensuring they are undertaken in accordance with established standards and practices including:
    - integrated ecosystem planning
    - impact assessment, risk assessment and monitoring of projects
    - regulatory and administrative (licensing, compliance, monitoring and enforcement, market mechanism) regimes
    - state of environment reporting
    - appeals and decision review including third party
    - system change and adaptation
    - prosecutions and investigations

- Proposals to change legislation and administrative frameworks where they impact on the environment
- Ways to address wider and emerging environmental concerns such as cumulative impacts and Genetically Modified Organisms
- Initiates inquiries, investigations and reports (either of its own volition or as a result of a third party reference) and undertakes inquiries at the direction of the Minister. To undertake these functions effectively, the EPA will require powers to:
  - require whole of government cooperation and facilitation in inquiries, investigations and reports
  - require agencies to provide information
  - recommend actions by government agencies and private sector entities
  - power to make the recommendations public at the discretion of the Board
  - call for submissions or adopt other mechanisms for obtaining input

In order to fulfil its role as an independent source of advice to government, business and the community, the EPA will need the capacity and resources to fund investigations and reports. As its budget from government is likely to be limited, it should have the power to seek contributions from interested parties, including both financial and in-kind support.

Triggers for any EPA involvement in investigations will require a case by case judgement by members of the EPA. The presumption would be that where existing government systems and processes are in place and working adequately, there is no need for EPA intervention. In the event of a third party reference, a case would need to be made to the EPA about why it should intervene. The EPA would deal only with systemic issues, not whether or not the party liked a particular government decision.

For such a system to work effectively, well defined appeals processes need to be embedded in operational legislation in order to deal with procedural (and possibly merit based) appeals. The EPA should not be seen as a substitute for good legislation and appeals process, rather it should have power to intervene if the statutory process is considered inadequate.

The role of the EPA will evolve. Initially it is likely to be focused on legislative review. It is also more likely to be involved in controversial issues in its early stages. After the initial term, it is expected that it will be able to focus more on standard setting and review.

Common expectations of EPA function not included in the recommended model:

- Role in assessment decisions; i.e. it is not anticipated that the EPA would take a day-to-day operational role in determining levels of assessment or in relation to recommendations of assessment. The EPA's interest would be in relation to the adequacy of the processes adopted for assessment.
- Monitoring, regulation, compliance of industry/major projects; i.e. it is not anticipated that the EPA would duplicate the operational roles of government agencies in monitoring, regulation and compliance. Rather the organisation and conduct of the monitoring and compliance function would still be a matter for government and Ministers. The EPA's interest would be in relation to the effectiveness of the systems that are in place and to ensure that these were operating in a way that gives affect to the overall standards established by the EPA.
- Role in appeals; i.e. it is not envisaged that the EPA would substitute for a well defined appeals process in operational legislation. It is anticipated that legislative reform of environmentally related statutes will result in the adoption of a clear set of appeals and review mechanisms, which do not require the EPA to take an operational role. The EPA's interest would be in ensuring that the appeals and review mechanisms are operating effectively to promote sustainable development.

## EPA structure and governance

The EPA should operate in accordance with the current accepted principles of good corporate governance. It will adopt a Board charter and under take regular performance reviews of its operations.

### Composition

In relation to the composition and appointment of the EPA, it is recommended that:

- Members be appointed by Executive Council on advice of the responsible Minister and a selection panel. The selection process would involve a search and recruitment process to be conducted by a suitably qualified search firm
- It has a small permanent membership of four (4) plus power to coopt from an appointed panel (with a range of knowledge and skills) on an as-needs basis. The appointed panel would be paid a stipend for services. The chair will require a casting vote
- Members are appointed for terms up to three years; that members be eligible for reappointment; and that appointments are staggered over time in order to enable membership to be refreshed while maintaining a degree of continuity
- The workload is part-time, with the fraction to be determined noting resource issues and perceptions of independence. Remuneration is required for board members
- Meetings are required at least quarterly, noting that they will need to be more frequent in the initial three year term
- The EPA has the power to appoint working groups and coopt others in order to obtain other sources of input
- Criteria for appointment
  - relevant areas of skills and knowledge including of regional and Indigenous issues
  - well respected individuals with qualifications related to Board functions
  - breadth of experience and expertise in environmental and industrial matters
  - track record of working with community
  - track record of building successful organisations delivering practical outcomes
  - specific requirements, e.g. regional/Indigenous membership

## Reporting relationships

The EPA should be established under statute, with wide ranging responsibilities for providing advice to relevant/responsible Minister(s) and Parliament. Government will remain responsible for final decisions.

The EPA can be directed by a Minister to consider particular matters, but cannot be directed about the content of its advice. Where a Minister does not take the advice of the EPA, reasons should be given and made publicly available.

The EPA should be required to report annually to Parliament via the responsible Minister.

The EPA's advice will be made public unless there are reasonable grounds for not meeting the presumption of release, e.g. commercial in confidence, working drafts etc., or administrative law has defined these, e.g. in *Freedom of Information* legislation. Decisions about what is not released should be made by a majority vote of board members.

## Public sector support

To manage the functions indicated above, the EPA would require a small secretariat (the EPA Secretariat).

The EPA Secretariat would be a discrete unit within the Department of Natural Resources, Environment and The Arts (NRETA) with a separate budgetary allocation, operating in accordance with a memorandum of understanding or heads of agreement with the Chief Executive aimed at ensuring Secretariat reports directly to the EPA. The Secretariat would be responsible to the EPA in the event of any conflict between EPA and Chief Executive/Minister. NRETA would provide administrative support and manage the financial transactions of the EPA. [In Western Australia the relationship with the public sector is established in the authorising legislation].

Information would be primarily prepared for consideration by the Board by NRETA officers with the EPA being able to draw on resources across government for expertise/advice. This would need to be managed by formal agreement with Chief Executives and/or Ministers.

The current EPA Program has specific operational responsibilities (e.g. for environmental impact assessment, monitoring and licensing) as well as providing secretariat services to the interim EPA Board. To be consistent with the recommended model of the EPA, these operational functions would need to be folded back into the responsible agency, currently NRETA.

To promote independence, the EPA Secretariat would be responsible for providing support for the Board, independent of operational line responsibilities to the NRETA Chief Executive. This could be achieved through legislating that staff of the Authority are public servants for the purposes of the *Public Sector Employment and Management Act* (e.g. similar to the Utilities Commission arrangements).

## Resource implications

New responsibilities (costs) associated with the recommended model include:

- EPA remuneration/stipends/meetings/travel
- Systematic engagement with regional/local communities
- Contingencies for inquiries and investigations
- Independent expert advice and services
- Promotion of best practice/sustainability
- Developing policy/guidelines etc.
- Review (and implementation by agencies) of State of Environment reporting
- Monitoring of agency processes
- Overseeing and input into systematic legislative review
- Liaison with agencies/Ministers
- Secretariat support
- Separate annual report

## EPA Board Members' Biographies



### Professor Gordon Duff

Professor Gordon Duff has been CEO of the Cooperative Research Centre (CRC) for Forestry based in Hobart since October 2006. Professor Duff was formerly CEO of the Tropical Savannas Management CRC at Charles Darwin University, and Professor of Environmental Science at Deakin University. He has a Bachelor of Science (Honours) from the University of Tasmania, a PhD in plant ecology from James Cook University, and is a Fellow of the Australian Institute of Company Directors.

At CDU Professor Duff conducted research in plant ecology and physiology. He has a wealth of experience in environmental management in northern Australia, and in managing complex organisations that collaborate with a diverse range of partners, and engage with an even larger number of stakeholders.



### Professor Donna Craig

Donna Craig was Professor of Desert Knowledge at Charles Darwin University in Alice Springs (2004-2007). She has a Bachelor of Arts and Law Degree from the University of New South Wales, and a Master of Laws from York University in Canada. Professor Craig has been Director of the Indigenous Law Program at Macquarie University. She has practised as a solicitor and barrister.

Along with extensive teaching experience, Professor Craig's academic experience is drawn from North America, Europe and Australia. She has been a Visiting Professor at the University of Arizona and has also undertaken many national and international environmental and Indigenous advisory roles.



### Mrs Judith King

Judith King has been a non-executive Director of the Power and Water Corporation's (PWC) Board since its establishment. She is Deputy Chairman of the PWC Board and previously chaired Power and Water's Environment Committee. She is a company director and business adviser with expertise in the growth and export of services. Mrs King has extensive board experience in both private and public sectors and is currently Chair of Information City Australia, AUSEMED, and a director of Federation Square Management.

Mrs King is Deputy Chair of the Victorian Commission for Gambling Regulation and was formerly a director of Melbourne Water Corporation and Citipower Ltd being closely involved in the restructuring and reform of those utilities. She is a Council Member of Swinburne University of Technology and an Adjunct Professor. In January 2003 she was awarded an Australian Centenary Medal.