

WHAT WE HEARD

Environmental Rights Act

Department of Environment and Natural Resources



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Introduction

The Government of the Northwest Territories (GNWT) is amending the *Environmental Rights Act* (ERA) to increase coherence and consistency across legislation, based on best practices in Canada. The amended Act will result in improved implementation, enforcement and decision-making, leading to a more sustainably managed environment by enabling the GNWT to assume post-devolution responsibilities for land, air and water.

As part of this process, the Department of Environment and Natural Resources (ENR) solicited public feedback on the proposed amended ERA through its website and social media. During this time ENR received three submissions from members of the public.

A summary of the comments received is reflected under the following seven themes:

1. Right to healthy environment
2. Definition of healthy environment
3. Investigation process
4. Compliance with other legislation
5. Assigning rights to nature
6. Application of the Act
7. Consideration of materials developed by the Alberta Environmental Law Centre

Summary of Comments Received

1. Right to healthy environment

1.1. What we heard

The right to a healthy environment should be a fundamental right just as important as any other right in the *Canadian Charter of Rights and Freedoms*. The ERA should make clear what actions citizens can take to protect this right, and what obligations the GNWT will have in supporting citizens in exercising this right.

1.2. ENR response

The right to a healthy environment is important to the people of the Northwest Territories and this right is acknowledged in the Preamble and Purpose of the amended ERA. The amendments to the ERA serve to better define the rights of citizens in protecting the environment as well as provide more detail around the obligations of the government to assist citizens in exercising this right. The right to a healthy environment has also been expanded to include anything that might cause harm to the health of the environment.

2. Definition of healthy environment

2.1. What we heard

A healthy environment should be defined as “an environment that protects the health and well-being of all species, human and non-human, and that maintains all components and ecological processes of the environment for their own sake and for the sake of future generations of human and non-human beings.”

2.2. ENR response

ENR conducted a jurisdictional scan and found that no other jurisdictions with environmental rights legislation define the term “healthy environment”.

ENR has determined that the inclusion of a definition of a “healthy environment” is not necessary and the lack of a definition does not reduce the ability of the Act to protect the rights of NWT residents.

3. Investigation process

3.1. What we heard

Investigations undertaken through the ERA should not be undertaken by the Minister but by the judicial system.

3.2. ENR response

The Act has been amended to broaden existing rights to request an investigation. A person may request an investigation by the Minister whenever a person believes an act or omission has caused serious harm to the environment. The amended Act will also provide clear timelines and responsibilities around the Minister’s obligation to report on the status of his or her investigation. The Minister’s investigation does not displace investigations by officers for offences under any other legislation. If a person is not satisfied with the result of the Minister’s investigation, the information provided can inform any further action, such as initiating a judicial review, private prosecution or civil action.

4. Compliance and other legislation

4.1. What we heard

The ERA should apply even in cases where defendants are in compliance with other legislation because the right to a healthy environment is a human right that supersedes poorly written legislation.

4.2. ENR response

Any adult resident who believes, on reasonable grounds, that an act or omission has occurred that has caused or is likely to cause significant harm to the environment may request an investigation. The Minister would then be obligated to conduct an investigation to determine the facts of the request. The investigation would be discontinued if the Minister determines that the alleged act or omission is not serious enough to warrant an investigation or that it is not likely to cause significant harm to the environment or it is authorized under another regulatory body.

5. Assigning rights to nature

5.1. What we heard

The idea of protecting non-human beings and all components and ecological processes "for their own sake" implies that non-human beings and even supposedly non-living components and processes of the environment should be able to enjoy their own rights to a healthy environment, and ENR should seriously consider including the concept of the rights of nature as a fundamental part of the ERA.

5.2. ENR response

Discussions with Indigenous governments and organizations raised concerns about the concept of assigning rights to nature and whether this could impact Aboriginal and treaty rights and Indigenous government laws. Through these discussions it was also noted that there are existing mechanisms to provide protection to the land.

At this time, ENR has decided not to include this concept in the amended ERA.

6. Application of the Act

6.1. What we heard

The ERA should apply to everyone, including all levels of business and government.

6.2. ENR response

The amended Act does apply to everyone in the Northwest Territories.

7. Consideration of materials developed by the Alberta Environmental Law Centre

7.1. What we heard

In developing the ERA, the GNWT should follow the "Model Environmental Rights Act" example of the Alberta Environmental Law Centre.

7.2. ENR response

During the process of amending the ERA, ENR conducted a jurisdictional review of relevant legislation and supporting documents. Information from these sources was used in developing an Act that is appropriate for the Northwest Territories.

Next Steps

The public will have another opportunity to comment on the draft legislation through a review process carried out by Standing Committee prior to third reading of the bill at a date yet to be determined.