

Explanatory Statement

WATER AMENDMENT BILL 2019

SERIAL NO. 80

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Water Act*.

The purpose of the Bill is to give effect to relevant recommendations of the Final Report of the *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*. Specifically, relevant recommendations that are addressed in this Bill include:

- Recommendation 7.6 – prohibition on surface water take for petroleum activities
- Recommendation 7.8(a) – prohibition on water extraction for hydraulic fracturing within 1km of landowners bore without agreement or hydrogeological information
- Recommendation 7.9 – prohibition on reinjection of hydraulic fracturing wastewater into aquifers
- Recommendation 7.17 – prohibition on release of hydraulic fracturing wastewater to surface waters

NOTES ON CLAUSES

Clause 1. Short Title

Provides for the citation of the Bill, when passed, as the *Water Amendment Act 2019*.

Clause 2. Commencement

Establishes when the *Water Amendment Act 2019* will commence; being on the day fixed by the Administrator by notice in the *Gazette*.

Clause 3. Act amended

Identifies the *Water Act* as the Act to which the *Water Amendment Act 2019* applies.

Clause 4. Section 4 amended (Interpretation)

Adds the definition of **hydraulic fracturing** as necessitated by the inclusion of section 17B, 17C and 60A and the definition of **hydraulic fracturing waste**.

Adds the definition of **hydraulic fracturing waste** by reference to section 4A for the purposes of sections 17A, 17B, 17C and 67.

Clause 5. Section 4A inserted

New section to provide definition for term **hydraulic fracturing waste** as referred to in section 4.

Clause 6. Part 2 heading amendment

Amendment of the heading of Part 2 to identify that it now also relates to hydraulic fracturing waste.

Clause 7. New Division 3 (Sections 17A, 17B and 17C) inserted

Hydraulic fracturing waste and water

Section 17A introduces a new offence provision which prohibits allowing hydraulic fracturing waste (whether treated or untreated) to come into contact with waters. This includes all types of waters (including water in a waterway, groundwater and tidal water). This section gives effect to the prohibitions required by both Recommendation 7.9 relating to hydraulic fracturing wastewater reinjection into aquifers and Recommendation 7.17 relating to discharging hydraulic fracturing wastewater to surface waters such as waterholes, rivers and streams.

As with section 16, it provides a scaling based on levels of environmental harm caused, **intention** and recklessness. The offences do not provide an authorising mechanism through other legislation nor waste discharge licences. Subsection 5 has been identified as a strict liability offence.

Application

Section 17B provides detail on the application of section 17A. Section 17B makes it clear that section 17A does not prohibit flowback fluid and produced water following hydraulic fracturing from being reused as the basis for fluids in future hydraulic fracturing events. This outcome will allow for reduced water-extraction related impacts on water resources and any environmental impacts associated with reuse of hydraulic fracturing fluids would be managed through an Environment Management Plan under the Petroleum (Environment) Regulations.

Evidentiary matters

Section 17C provides evidentiary matters for the offences of section 17A. These matters are aligned with existing section 16.

Clause 8. Section 45A inserted

Section 45A gives effect to Recommendation 7.6. It prohibits the Controller of Water Resources from issuing a licence to extract surface water for petroleum activities.

Clause 9. Section 60A inserted

Licence to take ground water for hydraulic fracturing

Section 60A gives effect to the element of Recommendation 7.8 regarding a 1km buffer from existing water bores. It requires that the Controller can only grant a groundwater extraction licence for hydraulic fracturing related take within 1km of a landholder's bore where the landholder has agreed or the hydrogeological investigation and groundwater monitoring has been undertaken demonstrating that there will not be an adverse impact. It applies in addition to the existing considerations as to whether to grant a groundwater extraction licence provided under section 90.

Designated bores

Bores to which the 1km buffer applies to include rural stock and domestic bores or any bore which has water take authorised through a water extraction licence. The designated bores may be already in existence or be a proposed bore which has had a bore work permit has been applied for or granted under section 57(1).

Bore owners

The section provides details for who the owner of the relevant bores are for the purpose of providing consent for hydraulic fracturing take.

Clause 10. Section 67 amended

Inserts a new element to section 67 which requires the Controller to not grant an aquifer recharge licence where hydraulic fracturing waste will be used for recharging.

Clause 11. Part 16 inserted

Provides transitional matters for the commencement of section 60A. Any applications that are made but not decided before the commencement of the *Water Amendment Act 2019* will be subject to section 60A, and therefore refused if they do not include landowner signoff or a hydrogeological investigation for hydraulic fracturing related take within 1km of an existing designated bore.

Clause 12. Repeal of Act

Allows the amended *Water Act* to take effect by repealing the *Water Amendment Act 2019* on the day after it commences.