

# Explanatory Statement

## PETROLEUM LEGISLATION AMENDMENT BILL 2018 SERIAL NO. 76

### LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

#### MINISTER FOR PRIMARY INDUSTRY AND RESOURCES

#### EXPLANATORY STATEMENT

#### GENERAL OUTLINE

This Bill amends the *Petroleum Act*.

The purpose of this Bill is to make amendments to the *Petroleum Act* to give effect to a number of recommendations made by the Inquiry into Hydraulic Fracturing in the Northern Territory by providing for open standing for the review of decisions and determinations through judicial review; the consideration of whether a person or entity is deemed appropriate to hold a permit or licence under this Act; to empower the *Petroleum (Environment) Regulations*; and ensure enforceability of codes of practice.

#### NOTES ON CLAUSES

#### PART 1 PRELIMINARY MATTERS

##### Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Petroleum Legislation Amendment Act 2018*.

##### Clause 2. Commencement.

This clause sets out how the amendment Act will be commenced. In this case this will be done on the day fixed by the Administrator by Gazette notice.

#### PART 2 AMENDMENT OF THE PETROLEUM ACT

##### Clause 3. Act Amended

This clause cites the Petroleum Act as the Act amended by this part of the Amendment Act.

##### Clause 4. Section 5 amended (Interpretation)

- I. Amends section 5(1) in providing interpretation for **appropriate person** to reflect amendment to section 15A whereby an appropriate person to hold a permit or licence under this Act is determined.
- II. Amends section 5(1) in providing a definition for **hydraulic fracturing**. In this case meaning the underground gas and oil extraction process that involves the injection of fluids at high pressure into a geological formation to induce fractures that conduct hydrocarbons for extraction.

##### Clause 5. Section 15A inserted

Inserts a new section 15A which details how an appropriate person to hold permit or licence under this Act is determined.

- I. Subsection 1 sets out matters the Minister must have regard to in determining whether a person or body is an appropriate person to hold a permit or licence under this Act. These are:
  - a. whether the person has contravened the prescribed legislation;
  - b. whether the person has held a licence or other authority under the prescribed legislation that has been suspended or revoked;
  - c. the person's record of compliance with the prescribed environmental legislation;
  - d. whether in the opinion of the Minister, the action or thing to be authorised by the permit or licence is not or will not be in the hands of a technically competent person;
  - e. whether in the opinion of the Minister, the person is of good repute, having regard to character, honesty and integrity;
  - f. whether the person has, in the previous 10 years, been convicted in the Territory or elsewhere of an offence involving fraud or dishonesty;
  - g. whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the person's creditors or made an assignment of the person's remuneration for their benefit;
  - h. whether the person is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years;
  - i. whether the person has demonstrated to the Minister the financial capacity to comply with the person's obligations under the permit or licence;
  - j. whether the person is in partnership, in connection with the action that is the subject of the permit or licence, with a person whom the Minister does not consider to be an appropriate person under this regulation;
  - k. and any other matters the Minister considers relevant in determining whether a person is an appropriate person to hold a permit or licence.
- II. Subsection 2 sets out the additional matters the Minister must consider if the person is a body corporate or in the case of a body corporate being the subsidiary of another body or company, the parent company. These being:
  - a. whether a director of the body corporate or parent company has contravened the prescribed legislation or has held a licence or other authority under the prescribed legislation that has been suspended or revoked;
  - b. or whether a director of the body corporate or parent company is or has been the director or another body corporate that has contravened the prescribed legislation or has held a licence or other authority under the prescribed legislation that has been suspended or revoked;
  - c. the record of compliance with the prescribed legislation;
  - d. whether in the opinion of the Minister, a director of the body corporate is of good repute;
  - e. whether a director has been convicted of an offence involving fraud or dishonesty in the last 10 years.
  - f. whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed within the previous 3 years.

- III. Subsection 3 declares that a reference to a director of a body corporate in this regulation includes reference to a person concerned with the management of the body corporate.
- IV. Subsection 4 sets out the Minister's ability to disregard contraventions mentioned in subsection 1 of this regulation having regard to the seriousness, the length of time since occurrence and any other matters that appear relevant to the Minister.
- V. Subsection 5 sets out the requirement for the Minister to publish on the Agency's website the reasons why the Minister has determined whether an applicant is an appropriate person to hold a licence or permit under this Act.
- VI. Subsection 6 defines the prescribed environmental legislation and prescribed legislation as referred to in subsection 2 of this regulation.

**Clause 6. Section 16 amended (Application for exploration permit)**

This clause amends section 16(3)(e) to include the requirement for an applicant to provide evidence that they are an appropriate person to be granted an exploration permit.

**Clause 7. Section 45 amended (Application for production licence)**

- I. This clause amends section 45(1) to insert the words "the following". This is in reference to the list of requirements to be included in an application to the Minister for a production licence.
- II. This clause amends section 45(1)(e) to include the requirement for an applicant to provide evidence that they are an appropriate person to be granted a production licence.
- III. This clause amends section 45(1)(j) to remove the work "and".

**Clause 8. Part II, Division 6, Subdivision 1 inserted**

This clause amends section 57AB to insert the provision for any person to seek judicial review of decisions or determinations specified in the Schedule.

**Clause 9. Section 58 amended (General conditions)**

This clause amends section 58 to insert "and" at the end of subsections (a), b(ii) and (c) to (g).

This clause amends subsection 58(a) to insert the requirement for a permittee or licensee with an exploration permit or licence under this Act to comply with any code of conduct adopted under this Act.

**Clause 10. Section 93 amended (Approval of transfers)**

- I. This clause amends section 93(9)(a) and (b) to insert "and" at the end of these subsections.
- II. This clause amends section 93(9)(c) to insert the requirement for the Minister to take into account in determining an application under this section evidence a transferee, and any parent company or associated entity of the transferee, is an appropriate person to hold a permit or licence

**Clause 11. Section 118 amended (Regulations)**

- I. This clause amends section 118(2)(a) to (q) to insert "and" at the end of these subsections.
- II. This clause amends section 118(2)(r) to insert provisions for the regulations to have power to make and enforce a code of practice, and providing for the breach of a code to be an offence under the regulations.
- III. This clause amends section 118 to insert subsection (4) which provides for the regulations to provide for a scheme which requires a person wanting to undertake certain activities under the Act to obtain an approval of an environment management plan.

Amendment to insert subsection (5) which provides for the scheme mentioned in subsection (4) may include the prescribing of decisions made under the regulations and who may apply for judicial review of those decisions.

Amendment to insert subsection (6) which allows the regulations to require that a plan submitted for approval be accompanied by other appropriate documents.

Inserts subsection (7) to define environment management plan in this section as a plan that addresses potential environmental risks and impacts that might arise from carrying on the activities contemplated in the plan.

**Clause 12. Schedule inserted**

This clause inserts Schedule 1 which lists the decisions or determinations reviewable by a judicial review.

**PART 3 AMENDMENT OF THE PETROLEUM (ENVIRONMENT) REGULATIONS**

**Clause 13. Regulations amended**

This clause cites the *Petroleum (Environment) Regulations* as the Regulations amended by this part of the Amendment Act.

**Clause 14. Regulation 3 amended (Definitions)**

This clause amends Regulation 3 to insert "as defined in section 118(7) of the Act" in the definition of environment management plan.

**Clause 15. Part 2, Division 7, Subdivision 1 inserted**

This clause inserts the provision for any person to seek judicial review by the Northern Territory Supreme Court for a decision specified in Schedule 1A.

**Clause 16. Regulation 29 amended (Review by Tribunal)**

This clause removes definition of Tribunal as the Civil and Administrative Tribunal. This definition is covered in Section 5 of the *Petroleum Act*.

**Clause 17. Schedule 1 amended (Information to be included in environment management plan)**

This clause amends Schedule 1 to include clause 10 (2) to define legislative requirements in this clause to include the requirement to comply with a code of practice.

**Clause 18. Schedule 1A inserted**

This clause inserts a list of decisions under the *Petroleum (Environment) Regulations* that are available for review by judicial review.

**PART 4 REPEAL OF ACT**

**Clause 19. Repeal of Act**

This clause repeals the Act on the day after it commences.