

NORTHERN TERRITORY OF AUSTRALIA

WATER AMENDMENT ACT 2019

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Act No. 19 of 2019

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 19 of 2019

An Act to amend the *Water Act 1992*

[Assented to 30 May 2019]  
[Introduced 13 February 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

## 1 Short title

This Act may be cited as the *Water Amendment Act 2019*.

## 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## 3 Act amended

This Act amends the *Water Act 1992*.

## 4 Section 4 amended (Interpretation)

Section 4(1)

*insert*

***hydraulic fracturing*** means the underground petroleum extraction process involving the injection of fluids at high pressure into a geological formation to induce fractures that conduct petroleum for extraction.

***hydraulic fracturing waste***, see section 4A.

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**5 Section 4A inserted**

After section 4

*insert*

**4A Meaning of *hydraulic fracturing waste***

- (1) ***Hydraulic fracturing waste*** is any of the following that is leftover from, surplus to or an unwanted by-product of hydraulic fracturing, whether it has been treated or is untreated:
- (a) a solid, liquid or gas;
  - (b) a mixture of those substances.
- (2) In addition, hydraulic fracturing waste includes a substance or a class of substances prescribed by regulation.

**6 Part 2 heading amended**

Part 2, heading

*omit*

**and pollution**

*insert*

**, pollution and hydraulic fracturing waste**

**7 Part 2, Division 3 inserted**

After section 17

*insert*

**Division 3 Hydraulic fracturing waste**

**17A Hydraulic fracturing waste and water**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct results in, directly or indirectly:
    - (i) hydraulic fracturing waste coming into contact with water; and
    - (ii) serious environmental harm; and

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(c) the person has knowledge of the result.

Penalty: environmental offence level 1.

(2) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in, directly or indirectly:

(i) hydraulic fracturing waste coming into contact with water; and

(ii) serious environmental harm; and

(c) the person is reckless in relation to the result.

Penalty: environmental offence level 2.

(3) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in, directly or indirectly:

(i) hydraulic fracturing waste coming into contact with water; and

(ii) material environmental harm; and

(c) the person has knowledge of the result.

Penalty: environmental offence level 2.

(4) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in, directly or indirectly:

(i) hydraulic fracturing waste coming into contact with water; and

(ii) material environmental harm; and

(c) the person is reckless in relation to the result.

Penalty: environmental offence level 3.

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- (5) A person commits an offence if the person engages in conduct that results in, directly or indirectly, hydraulic fracturing waste coming into contact with water.

Penalty: environmental offence level 4.

- (6) Strict liability applies to subsection (5).

- (7) In this section:

**water** means:

- (a) water flowing or contained in a waterway; or
- (b) ground water; or
- (c) tidal water.

#### **17B Application of section 17A**

- (1) Section 17A does not apply if:

- (a) hydraulic fracturing waste is produced water or flowback fluid; and
- (b) the hydraulic fracturing waste comes into contact with water that is contained in the geological formation being targeted by the process of hydraulic fracturing.

- (2) In this section:

**flowback fluid** means fluid that is a mixture of hydraulic fracturing fluid and formation fluid that is allowed to flow from the well following hydraulic fracturing.

**produced water** means naturally occurring water that is extracted from a geological formation following hydraulic fracturing.

#### **17C Evidentiary matters**

In a proceeding for an offence against section 17A, proof of the existence on land, where hydraulic fracturing has occurred or is occurring, of any of the following things is evidence that hydraulic fracturing waste came into contact with water at the time the thing existed:

- (a) a drain;
- (b) a pond;
- (c) a dump;

- 
- (d) any other means (including mechanical means) by which hydraulic fracturing waste is capable of being conveyed, retained or deposited so that it may, directly or indirectly, come into contact with water.

## **8 Section 45A inserted**

After section 45

*insert*

### **45A No licence to take water for petroleum activity**

The Controller must not grant a licence under section 45 if the proposed beneficial use of water under the licence is petroleum activity.

## **9 Section 47 amended (Declaration of exemptions)**

- (1) Section 47, before "The"

*insert*

(1)

- (2) Section 47, at the end

*insert*

- (2) A declaration under subsection (1) must not exempt the application of the following provisions:
- (a) section 60A;
  - (b) section 67(4).

## **10 Section 60A inserted**

After section 60

*insert*

### **60A Licence to take ground water for hydraulic fracturing**

- (1) This section applies in relation to an application for a licence, or a licence proposed to be granted on the Controller's own initiative, to take water from a bore if:
- (a) the proposed beneficial use of water under the licence is petroleum activity that includes hydraulic fracturing; and

- 
- (b) one or more designated bores are located within 1 km of the bore.
- (2) The Controller must not grant the licence unless:
- (a) the owner of each designated bore mentioned in subsection (1)(b) consents to the grant of the licence; or
  - (b) the Controller is satisfied that hydrogeological investigations and groundwater modelling indicate that the activities under the licence will not have any adverse effect on the supply of water to any designated bore mentioned in subsection (1)(b).
- (3) In this section:

**designated bore** means any of the following:

- (a) a bore used for rural stock and domestic beneficial use;
- (b) a bore in relation to which a water extraction licence has been granted;
- (c) a proposed bore in relation to which the Controller has received but not yet decided an application for a bore work permit under section 57(1) that is proposed to be used for:
  - (i) rural stock and domestic beneficial use; or
  - (ii) a use that requires the grant of a water extraction licence;
- (d) a proposed bore in relation to which a bore work permit under section 57(1) is in force that is proposed to be used for:
  - (i) rural stock and domestic beneficial use; or
  - (ii) a use that requires the grant of a water extraction licence.

**owner**, of a designated bore, means:

- (a) if a permit or licence under this Act is in force in relation to the bore – the holder of the permit or licence; or
- (b) if the designated bore is a proposed bore in relation to which the Controller has received an application under section 57(1) – the person who has made the application to construct the bore; or



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- (c) if a bore exists but there is no permit or licence under this Act in force in relation to the bore – the person who uses or maintains the bore.

**11 Section 67 amended (Grant of recharge licence)**

After section 67(3)

*insert*

- (4) The Controller must not grant a licence that permits the increase of water contained in an aquifer with water that is or contains hydraulic fracturing waste.

**12 Part 16 inserted**

After section 116

*insert*

**Part 16 Transitional matters for Water Amendment Act 2019**

**117 Application of section 60A**

Section 60A applies in relation to an application under section 60(1) that was made but not decided by the Controller before the commencement of section 9 of the *Water Amendment Act 2019*.

**13 Repeal of Act**

This Act is repealed on the day after it commences.