

NORTHERN TERRITORY OF AUSTRALIA

PETROLEUM LEGISLATION MISCELLANEOUS AMENDMENTS ACT 2020

Act No. 12 of 2020

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 12 of 2020

An Act to amend the *Petroleum Act 1984* and the *Petroleum (Environment) Regulations 2016*

[Assented to 30 March 2020]
[Introduced 28 November 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Petroleum Legislation Miscellaneous Amendments Act 2020*.

2 Commencement

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

Part 2 Amendment of Petroleum Act 1984

3 Act amended

This Part amends the *Petroleum Act 1984*.

4 Section 5 amended (Interpretation)

Section 5(1)

insert

environment, see section 6 of the *Environment Protection Act 2019*.

principles of ecologically sustainable development means the principles set out in sections 18 to 24 of the *Environment Protection Act 2019*.

5 Part IA inserted

After section 6

insert

Part IA Principles of ecologically sustainable development**6A Principles of ecologically sustainable development**

- (1) The Minister must consider and apply the principles of ecologically sustainable development in making the following decisions under this Act:
 - (a) the decisions specified in Schedule 1;
 - (b) a decision made under a direction given by the Minister under section 71(1);
 - (c) any other prescribed decision.
- (2) Unless otherwise expressly provided, in making a decision under this Act and stating the reasons for that decision, the Minister is not required to specify how the Minister considered or applied these principles.

6 Section 15A amended (Appropriate person to hold permit or licence)

Section 15A(1), after "grant"

insert

or renew

7 Section 16 amended (Application for exploration permit)

- (1) Section 16, heading

omit

Application

insert

Release of blocks and application

- (2) Before section 16(1)

insert

- (1AA) This section applies if the Minister intends to release, under section 16A, specified blocks for exploration under an exploration permit.

- (3) Section 16(1)

omit

all words from "may" to "appropriate"

insert

must, by notice published in a newspaper circulating throughout the Territory and on the Agency's website

- (4) After section 16(2)(d)

insert

(da) the reasons why the specified blocks are intended to be released for exploration;

(db) an invitation to give submissions on the release of the specified blocks for exploration;

(dc) the period during which submissions may be made is the same as the application period;

(5) After section 16(2)

insert

(2A) A submission under subsection (2)(db) is limited to the following:

- (a) if there are other existing or proposed industries for a specified block – whether exploration of the specified block is possible at the same time;
- (b) whether the land of a specified block is suitable for exploration.

Note for subsection (2A)(b)

The submission may submit that the land is not suitable for exploration because the land is:

- (a) subject to intensive agriculture; or*
- (b) of high ecological value; or*
- (c) of high scenic value; or*
- (d) culturally significant; or*
- (e) of strategic importance to nearby residential areas.*

8 Section 16A inserted

After section 16

insert

16A Determination of release of blocks

After the application period has ended, the Minister must:

- (a) consider any applications received and any submissions received; and
- (b) determine which blocks are to be released for exploration; and
- (c) release the specified blocks for exploration; and
- (d) publish, on the Agency's website, the decision under paragraph (c) and the reasons why the blocks are appropriate for exploration.

9 Section 18 amended (Notice of application for exploration permit)

(1) Section 18(1)(e)

omit

all words from "who" to "an application area"

(2) Section 18(3)

omit

10 Section 19 amended (Objections)

(1) Section 19(1)

omit

Subject to section 18(3), objections

insert

Objections

(2) After section 19(2)

insert

(2A) The Minister must, as soon as practicable after receiving the objections, publish the objections on the Agency's website.

11 Section 28 amended (Variation etc. of condition of exploration permit)

After section 28(1)

insert

(1A) An application under subsection (1) must be accompanied by the prescribed fee.

12 Section 41 amended (Variation, &c., of conditions of retention licence)

(1) Section 41, heading

omit

, &c., of conditions

insert

etc. of condition

(2) After section 41(1)

insert

(1A) An application under subsection (1) must be accompanied by the prescribed fee.

13 Section 55 amended (Variation, &c., of conditions of production licence)

(1) Section 55, heading

omit

, &c., of conditions

insert

etc. of condition

(2) After section 55(1)

insert

(1A) An application under subsection (1) must be accompanied by the prescribed fee.

14 Section 57A amended (Access authorities)

After section 57A(2)

insert

(2A) An application under subsection (2) must be accompanied by the prescribed fee.

15 Section 57ABA amended (Judicial review of decision or determination)

Section 57ABA

omit

the Schedule

insert

Schedule 2

16 Section 65 amended (Access)

Section 65(3)

omit

17 Section 73 amended (Surrender)

(1) Section 73(1B)(a)

omit

he or she

insert

the permittee or licensee

(2) Section 73(1B)(b)

omit

Minister.

insert

Minister; and

(3) After section 73(1B)(b)

insert

(c) the prescribed fee.

(4) Section 73(1C)

omit

he or she

insert

the Minister

18 Section 81 amended (Compensation to owners)

- (1) Section 81(1)(b)

omit

land.

insert

land; and

- (2) After section 81(1)(b)

insert

(c) any other prescribed reason or circumstance.

Note for subsection (1)

If a permittee or licensee and a person entitled to compensation are unable to agree on an amount or other benefit, by way of compensation, to which the person is entitled, either party may refer the dispute to the Tribunal under section 82A.

- (3) Section 81(3)

omit

- (4) After section 81(7)

insert

- (7A) The Regulations may provide for a method and manner of calculating compensation payable under this section.

19 Section 82 amended (Compensation for right of access)

- (1) Section 82(2), at the end

Note for subsections (1) and (2)

If a permittee or licensee and a person entitled to compensation are unable to agree on an amount, by way of compensation, to which the person is entitled, either party may refer the dispute to the Tribunal under section 82A.

- (2) Section 82(5) and (6)

omit, insert

- (5) The Regulations may provide for a method and manner of calculating compensation payable under this section.

20 Section 82A inserted

After section 82

insert

82A Jurisdiction of Tribunal for disputes

- (1) The Tribunal has jurisdiction to deal with the following disputes:
 - (a) if a permittee or licensee and a person entitled to compensation under section 81(1) are unable to agree on an amount or other benefit, by way of compensation, to which the person is entitled;
 - (b) if a permittee or licensee and a person entitled to compensation under section 82(1) or (2) are unable to agree on an amount, by way of compensation, to which the person is entitled;
 - (c) any other kind of dispute prescribed by regulation.
- (2) A dispute mentioned in subsection (1)(a) or (b) may be referred to the Tribunal by either party.
- (3) The compensation that may be payable to a native title holder under section 82 is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.
- (4) A person entitled to compensation under section 82(1) or (2) includes a registered native title body corporate.

82B Tribunal not to review decision

Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply in relation to any arbitration, decision or determination of the Tribunal made under section 82A or 118(6A)(k).

Note for section 82B

This section also provides that section 140 of the Northern Territory Civil and Administrative Tribunal Act 2014 does not apply to a decision made by the Tribunal arising from a dispute of a kind prescribed by regulation.

21 Section 93 amended (Approval of transfers)

(1) Before section 93(1)

insert

(1AA) This section applies to:

- (a) a permittee or licensee intending to transfer the interest or any part of the interest in an exploration permit or licence to any person or persons; or
- (b) a body corporate that holds a permit or licence intending to transfer the legal title or the beneficial interest in 100% of the shares of the body corporate to another entity.

(2) Section 93(1)

omit

all words from "a permittee" to "purpose"

insert

a permittee or licensee or body corporate

(3) After section 93(9A)

insert

(9B) The Minister must be satisfied that the entity that seeks to acquire the legal title or the beneficial interest in 100% of the shares of the body corporate is an appropriate person to hold a permit or licence.

22 Section 108A inserted

After section 108

insert

108A Interference with activities or work

A person must not interfere with:

- (a) activities being conducted in accordance with a permit or licence under this Act; or

- (b) the construction of a road, or other work or operations being done, in accordance with section 57A(9) or 65.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

23 Section 111 replaced

Section 111

repeal, insert

111 Certain operations prohibited

- (1) Subject to this section, a permittee or licensee must not:
- (a) carry out operations, which would otherwise be permitted under this Act, on land that is:
 - (i) used as, or within 50 m of land being used as, a residence, yard, garden, orchard or cultivated field; or
 - (ii) used as, or within 200 m of land being used as, a cemetery; or
 - (iii) within a distance of 200 m of any artificial accumulation of water or any outlet from which water may be obtained; and
 - (b) construct a well, wellhead, pipeline or petroleum processing facility, which would otherwise be permitted under this Act, on land that is used as, or within 2 km of land being used as, a habitable dwelling; and
 - (c) construct a well or well pad, which would otherwise be permitted under this Act, on land that is within 1 km of a designated bore.
- (2) The permittee or licensee may carry out operations on land mentioned in subsection (1)(a)(i) or (iii) with the written approval of:
- (a) the owner of the land or, if the occupier of the land has, in the land, an interest registered on the Register kept by the Registrar-General under Part 3 of the *Land Title Act 2000*, the occupier; and
 - (b) any registered native title bodies corporate, or registered native title claimants, in relation to the land.

- (3) The permittee or licensee may carry out construction of a well or well pad on land mentioned in subsection (1)(c) with the written approval of:
- (a) the owner of the land or, if the occupier of the land has, in the land, an interest registered on the Register kept by the Registrar-General under Part 3 of the *Land Title Act 2000*, the occupier; and
 - (b) any registered native title bodies corporate, or registered native title claimants, in relation to the land; and
 - (c) the owner of the designated bore.
- (4) If the cemetery is a public cemetery, the permittee or licensee may carry out operations on land mentioned in subsection (1)(a)(ii) with the written approval of the Board of Trustees of the cemetery.
- (5) In this section:

cemetery, see section 4 of the *Cemeteries Act 1952*.

designated bore, see section 60A(3) of the *Water Act 1992*.

habitable dwelling means:

- (a) a building in which people reside or work; or
- (b) a school, including a playground associated with a school; or
- (c) a permanent sporting facility; or
- (d) a hospital or other type of community medical facility.

owner, of a designated bore, see section 60A(3) of the *Water Act 1992*.

petroleum processing facility means a temporary or permanent facility for the processing or storage of petroleum.

pipeline means a pipeline constructed or to be constructed for a purpose mentioned in section 4(1)(e)(i) to (iv) of the *Energy Pipelines Act 1981*.

public cemetery, see section 4 of the *Cemeteries Act 1952*.

24 Section 117AAB amended (Interpretation)

Section 117AAB(1), definition *environment*

omit

25 Section 118 amended (Regulations)

(1) Section 118(2)(q)

omit, insert

(pa) land access agreements; and

(pb) environmental security; and

(q) fees that may be payable or imposed by or under this Act; and

(2) After section 118(6)

insert

(6A) In regulations for or in relation to land access agreements under subsection (2)(pa), the Administrator may provide for any of the following:

(a) the circumstances in which a land access agreement between parties is required;

(b) the parties who are required to enter into a land access agreement;

(c) the process to be undertaken by the parties to enter into a land access agreement;

(d) the minimum requirements of a land access agreement;

(e) the process to be undertaken if a land access agreement cannot be entered into between the parties;

(f) the requirement to maintain a register of land access agreements and the manner in which a land access agreement is registered;

(g) the liability of the parties to the costs associated with land access agreements;

(h) the requirement to maintain a register of persons with dispute resolution qualifications and the circumstances in which a person in the register would be required to assist the parties;

- (i) the requirement for a party to a land access agreement to provide a guarantee in favour of a third party;
- (j) the consequences of a breach of a land access agreement and a scheme for the enforcement of a land access agreement, including by providing that a breach of a land access agreement is an offence against the regulations;
- (k) the conferral of jurisdiction on the Tribunal to do the following:
 - (i) arbitrate between the parties required to enter into a land access agreement;
 - (ii) deal with a dispute between the parties required to enter into a land access agreement or deal with a dispute between the parties to a land access agreement;
 - (iii) determine the contents of a land access agreement for the parties;
 - (iv) determine that a land access agreement be terminated;
- (l) despite sections 131 and 132 of the *Northern Territory Civil and Administrative Tribunal Act 2014* – the Tribunal making costs orders in relation to an arbitration, decision or determination arising from the conferral of jurisdiction from this subsection;
- (m) the functions to be performed, and powers to be exercised, by the Minister;
- (n) the way in which the Minister may perform a function or exercise a power, including the way in which the Minister may exercise a discretion;
- (o) Ministerial approval of a land access agreement;
- (p) the decisions made under the regulations that are subject to judicial review or merits review and who may apply for judicial review or merits review of those decisions.

Note for subsection (6A)(k)

Section 82B provides that section 140 of the Northern Territory Civil and Administrative Tribunal Act 2014 does not apply to a decision made by the Tribunal as a result of jurisdiction conferred under subsection (6A)(k).

- (6B) In regulations for or in relation to an environmental security under subsection (2)(pb), the Administrator may provide for:
- (a) the circumstances in which an environmental security is payable;
 - (b) the amount of an environmental security payable;
 - (c) the manner in which an amount of the environmental security is determined;
 - (d) the manner in which an environmental security is varied;
 - (e) the manner in which an environmental security is payable;
 - (f) how an environmental security may be transferred;
 - (g) the circumstances in which an environmental security is released.

26 Part VII, Division 4 and Schedule 1 inserted

After section 125

insert

Division 4 Petroleum Legislation Miscellaneous Amendments Act 2020

126 Definitions

In this Division:

commencement means the commencement of Part 2 of the *Petroleum Legislation Miscellaneous Amendments Act 2020*.

127 Application made for exploration permit before commencement

Part II, Division 2, as in force before the commencement, applies to an application for the grant of an exemption permit for specified blocks under section 16(1) made before the commencement.

128 Decision in relation to renewal of exploration permit

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 25(1)(a) or (b) or (2) or 27 in relation to an application under section 25(1) made before the commencement.

129 Decision in relation to variation of condition of exploration permit

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 28(2) in relation to an application under section 28(1) made before the commencement.

130 Decision in relation to renewal of retention licence

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 38(1)(a) or (b), (2) or (3) or 40 in relation to an application under section 37(1) made before the commencement.

131 Decision in relation to variation of condition of retention licence

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 41(2) in relation to an application under section 41(1) made before the commencement.

132 Decision in relation to renewal of production licence

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 52(1)(a) or (b), (2) or (3) or 54(1) in relation to an application under section 51(1) made before the commencement.

133 Decision in relation to variation of condition of production licence

The Minister is not required to consider and apply the principles of ecologically sustainable development in making a decision made under section 55(2) in relation to an application under section 55(1) made before the commencement.

134 Application of section 108A

- (1) Section 108A, as inserted by the *Petroleum Legislation Miscellaneous Amendments Act 2019*, applies only in relation to offences committed after the commencement.
- (2) Section 65(3), as in force before the commencement, continues to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

135 Construction undertaken before commencement

(1) Section 111, as in force after the commencement, does not apply to the following undertaken, but not completed, by a permittee or licensee before the commencement:

- (a) construction of a well, wellhead, pipeline or petroleum processing facility on land that is used as, or within 2 km of land being used as, a habitable dwelling;
- (b) construction of a well or well pad on land that is within 1 km of a designated bore.

(2) In this section:

habitable dwelling, see section 111(5).

Schedule 1 Decisions subject to principles of ecologically sustainable development

section 6A

Provision	Decision or determination
section 9(1)	A decision to reserve blocks from exploration permit or licence
section 10(1)	A decision to revoke or vary reservation of block
section 15(3) or (4)	A decision to give directions
section 16A	A decision to release blocks for exploration
section 20(3)	A determination to grant or refuse exploration permit
section 25(1)(a)	A decision to renew exploration permit if satisfied of certain matters
section 25(1)(b)	A decision to renew exploration permit despite non-compliance
section 25(2)	A decision to refuse to renew permit
section 27	A decision to grant or renew exploration permit subject to conditions
section 28(2)	A decision to vary, suspend or waive a condition of exploration permit

Provision	Decision or determination
section 29(3)	A decision to grant production licence subject to conditions considered appropriate
section 30(2)	A decision directing permittee to apply for production licence
section 34(1)	A determination to grant or refuse retention licence
section 38(1)(a)	A decision indicating preparedness to renew retention licence if satisfied of certain matters
section 38(1)(b)	A decision indicating preparedness to renew retention licence despite non-compliance
section 38(2)	A decision indicating preparedness to renew retention licence
section 38(3)	A decision to refuse to renew retention licence
section 40	A decision to grant a retention licence on conditions
section 41(2)	A decision to vary, suspend or waive condition of retention licence
section 42(2)	A decision to grant production licence subject to conditions considered appropriate
section 43(2)	A decision to direct licensee to apply for production licence
section 47(1)	A determination to grant production licence if satisfied of certain matters
section 47(2)	A determination to grant or refuse to grant production licence
section 52(1)(a)	A decision indicating preparedness to renew production licence if satisfied of certain matters
section 52(1)(b)	A decision indicating preparedness to renew production licence despite non-compliance
section 52(2)	A decision indicating preparedness to renew production licence
section 52(3)	A decision to refuse to renew production licence

Provision	Decision or determination
section 54(1)	A decision to impose appropriate conditions on a production licence
section 55(2)	A decision to vary, suspend or waive condition of production licence
section 57A(3)	A decision to grant or refuse to grant access authority
section 57A(4)	A decision to impose conditions on access authority
section 57A(5)	A decision to vary access authority area or condition
section 73(1C)	A decision to accept an application for surrender if satisfied of certain matters
section 79(1)	A decision requiring security be lodged
section 79(3)	A decision to vary amount of security
section 119	A decision to renew a permit or lease
section 119(2B) or (2C)	A decision to give directions
section 119(6)	A decision to grant a permit or licence

27 Schedule amended (Judicial Review of decision or determination)

(1) Schedule, heading, after "**Schedule**"

insert

2

(2) Schedule, after entry for section 16(1)

insert

section 16A A decision to release blocks for exploration

Part 3 Amendment of Petroleum (Environment) Regulations 2016

28 Regulations amended

This Part amends the *Petroleum (Environment) Regulations 2016*.

29 Regulation 3 amended (Definitions)

Regulation 3, definitions *environment* and *principles of ecologically sustainable development*

omit

30 Regulation 4 repealed (Principles of ecologically sustainable development)

Regulation 4

repeal

31 Regulation 5A inserted

After regulation 5, in Part 1

insert

5A Decisions subject to the principles of ecologically sustainable development

For section 6A of the Act, the following decisions are prescribed decisions:

- (a) a decision to approve a plan under regulation 11(2)(a)(i);
- (b) a decision to give an interest holder a resubmission notice under regulation 11(2)(b);
- (c) a decision to approve a plan modified in response to a resubmission notice under regulation 11(3)(a);
- (d) a decision to give an interest holder a further resubmission notice under regulation 11(3)(b)(i);
- (e) a decision to refuse to approve the plan under regulation 11(3)(b)(ii);
- (f) a decision to give notice to an interest holder under regulation 14(b) specifying that the holder's notice is accepted and the plan has ceased to be in force;

- (g) a decision to give an interest holder a revision notice under regulation 19(1);
- (h) a decision that a revision is no longer required under regulation 20(2)(a);
- (i) a decision to require a revision under regulation 20(2)(b);
- (j) a decision to revoke the approval of a current plan under regulation 27(1).

32 Regulation 9 amended (Approval criteria for plan)

Regulation 9(2)

omit

Part 4 Repeal of Act

33 Repeal of Act

This Act is repealed on the day after it commences.