

Serial 89
Energy Pipelines
Amendment
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA
ENERGY PIPELINES AMENDMENT BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Energy Pipelines Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Energy Pipelines Amendment Act 1998*.

2. COMMENCEMENT

(1) Sections 3 to 7 (inclusive) and section 9 come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(2) Sections 8, 10 and 11, to the extent that those sections apply in relation to acts to which section 24MD(6B) of the *Native Title Act 1993* of the Commonwealth applies, come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(3) Sections 8, 10 and 11, to the extent that those sections apply in relation to acts to which section 43A of the *Native Title Act 1993* of the Commonwealth applies, come into operation on the date fixed by the Administrator by notice in the *Gazette*.

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3. PRINCIPAL ACT

The *Energy Pipelines Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended —

- (a) by inserting before the definition of "apparatus or works" in subsection (1) the following:

"'affected land or waters', in relation to an application for a prescribed pipeline act, means land or waters that will be or is likely to be affected by the activities of the applicant if the prescribed pipeline act is done;"

- (b) by omitting from paragraph (d) of the definition of "land" in subsection (1) "and";

- (c) by omitting from paragraph (e) of the definition of "land" in subsection (1) "authority;" and substituting "authority; and";

- (d) by adding at the end of the definition of "land" in subsection (1) the following:

"(f) land or waters in respect of which there are native title rights and interests;"

- (e) by inserting after the definition of "licensee" in subsection (1) the following:

"'native title' and 'native title rights and interests' have the meaning given in section 223 of the Native Title Act;

'Native Title Act' means the *Native Title Act 1993* of the Commonwealth;

'native title holder' has the meaning given in section 224 of the Native Title Act;"

- (f) by omitting from paragraph (b) of the definition of "owner" in subsection (1) "and" (last occurring);

- (g) by omitting from paragraph (c) of the definition of "owner" in subsection (1) "authority;" and substituting "authority; and";

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- (h) by adding at the end of the definition of "owner" in subsection (1) the following:

"(d) in relation to land or waters in respect of which there are native title rights and interests, the native title holder;"

- (j) by inserting after the definition of "pipeline" in subsection (1) the following:

"'prescribed pipeline act' has the meaning given in section 43A;

'pipeline interest' has the meaning given in section 43A;"

- (k) by inserting after the definition of "registered holder" in subsection (1) the following:

"'registered native title body corporate' has the meaning given in section 253 of the Native Title Act;

'registered native title claimant' has the meaning given in section 253 of the Native Title Act;

'registered native title rights and interests' has the meaning given in section 30(3) of the Native Title Act;"

- (m) by inserting after the definition of "relinquished area" in subsection (1) the following:

"'representative Aboriginal/Torres Strait Islander body' has the meaning given in section 253 of the Native Title Act;" and

- (n) by inserting after the definition of "this Act" in subsection (1) the following:

'Tribunal' means the Lands and Mining Tribunal established by the *Lands and Mining Tribunal Act*;"

5. REPEAL

Section 17A of the Principal Act is repealed.

6. REPEAL AND SUBSTITUTION

Section 21 of the Principal Act is repealed and the following substituted:

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"21. VARIATION OF LICENCE BECAUSE OF LEGISLATIVE REQUIREMENTS

"(1) Where a licensee is required to vary the route of a proposed pipeline as the result of an Act or instrument of a legislative or administrative character, including an Act or instrument of the Commonwealth, the licensee may apply to the minister for a variation of the licence to enable the licensee to comply with the requirement.

"(2) On receipt of an application under subsection (1) and after giving the notice and taking the steps that the Minister thinks fit, the minister may vary the licence to the extent required to enable the licensee to comply with the requirement."

7. EASEMENTS OVER CROWN LANDS

Section 22 of the Principal Act is amended by omitting "Notwithstanding anything to the contrary in an Act or" and substituting "Despite anything in this Act (other than Part IIIA) or another Act or anything".

8. NEW PART

The Principal Act is amended by inserting after Part III the following:

"PART IIIA — PRESCRIBED PIPELINE ACTS AFFECTING REGISTERED NATIVE TITLE RIGHTS AND INTERESTS

"43A. PRESCRIBED PIPELINE ACTS

"(1) For the purposes of this Part, subject to subsections (2) and (3), the following acts are prescribed pipeline acts:

- (a) the grant of a permit under section 8;
- (b) the extension of a permit under section 9;
- (c) the variation of a permit under section 10;
- (d) the grant of a licence under section 15 or 15A;
- (e) the renewal of a licence under section 16;
- (f) the variation, suspension or waiver of a condition under section 20;
- (g) the variation of a licence under section 21;
- (h) the variation of the route of a pipeline or a licence area under section 21D;

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(j) the variation or suspension of, or the exemption from compliance with, a condition under section 23;

(k) a direction under section 26.

"(2) A renewal referred to in subsection (1) is not a prescribed pipeline act if —

(a) it is a renewal to which section 24IC or 26D of the Native Title Act applies; or

(b) it is a past act by virtue of section 228(4) or (9) of the Native Title Act.

"(3) A variation referred to in subsection (1)(f) or (j) is not a prescribed act if it is a variation to which section 24IC or 26D of the Native Title Act applies.

"(4) For the purposes of this Part, a pipeline interest is the permit or licence granted, renewed, varied or otherwise affected by a prescribed pipeline act.

"43B. APPLICATION

"(1) This Part applies in relation to a prescribed pipeline act that —

(a) affects registered native title rights and interests;

(b) is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies; and

(c) relates, to any extent, to an area of land or waters that is an alternative provision area within the meaning of section 43A of the Native Title Act.

"(2) Subject to subsections (3), (5) and (6), the requirements of this Part are in addition to and not in derogation of the other requirements under this Act.

"(3) In the event of an inconsistency between this Part and another provision of this Act, this Part prevails.

"(4) For the purposes of subsection (2), this Part is consistent with another provision of this Act if it is capable of operating concurrently with that other provision.

"(5) Where, but for this subsection —

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- (a) an objection to a prescribed pipeline act may be lodged under this Part; or
- (b) a representation about a prescribed pipeline act may be lodged under another Part,

either the objection may be lodged under this Part or the representation may be lodged under that other Part but not both and this Act applies in relation to the objection or representation accordingly.

"(6) Where, but for this subsection, a question about compensation for the effect of a prescribed pipeline act on native title may be referred to a person or body under this Part or another Part, the question may be referred under either this Part or that other Part but not both and this Act applies in relation to the referral accordingly.

"(7) In this Part so far as it applies in relation to a prescribed pipeline act referred to in subsection (1) (k) -

- (a) a reference to the applicant for the prescribed pipeline act is to be read as a reference to the minister or body requesting the direction; and
- (b) a reference to the application for the prescribed pipeline act is to be read as a reference to the request made by that minister or body.

"43C. ACT VALID IF PROCEDURES COMPLIED WITH

(1) A prescribed pipeline act is valid to the extent that it affects native title if in relation to the doing of the act the procedures of this Part are complied with.

(2) If -

- (a) a prescribed pipeline act is done in respect of land or waters; and
- (b) the prescribed pipeline act is, to the extent that it affects native title in relation to part of the land or waters, invalid,

then -

- (c) the invalidity does not affect the validity of the prescribed pipeline act to the extent that it affects native title in relation to the remainder of the land or waters; and

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- (d) the prescribed pipeline act has effect as if it had been done only in relation to the remainder of the land or waters.

"43D. FORM OF APPLICATION

"An application for a prescribed pipeline act is to contain —

- (a) a list of registered native title claimants (if any) in relation any of the affected land or waters;
- (b) a list of registered native title bodies corporate (if any) in relation to any of the affected land or waters; and
- (c) the representative Aboriginal/Torres Strait Islander body or bodies in relation to the affected land or waters.

"43E. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

"(1) Within 14 days after the lodgement of an application for a prescribed pipeline act or within the further time allowed in writing by the Minister —

- (a) if the prescribed pipeline act is an act to which section 24MD(6B) of the Native Title Act applies — the Minister must serve written notice of the making of the application on the persons referred to in section 43D(a), (b) and (c); or
- (b) if the prescribed pipeline act is an act to which section 43A of the Native Title Act applies — the applicant must serve written notice of the making of the application on the persons referred to in section 43D(a), (b) and (c).

"(2) Within 14 days after the applicant serves notice in writing of the application under subsection (1)(b) or within the further time allowed in writing by the Minister, the applicant must provide the Minister with the evidence of service of the notice and the method of service that the Minister requires.

"(3) A notice under subsection (1) is to contain the prescribed information and a statement to the effect that —

- (a) registered native title claimants and registered native title bodies corporate in relation to any of the affected land or waters

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may lodge, in writing with the Minister within the specified objection period —

- (i) if the prescribed pipeline act is an act to which section 24MD(6B) of the Native Title Act applies — an objection to the prescribed pipeline act that may include an objection to the prescribed pipeline act so far as it affects their registered native title rights and interests; or
 - (ii) if the prescribed pipeline act is an act to which section 43A of the Native Title Act applies — an objection to the prescribed pipeline act so far as it affects their registered native title rights and interests; and
- (b) an objection to the prescribed pipeline act so far as it affects registered native title rights and interests is to state the manner in which it is said that the doing of the act would affect those registered native title rights and interests.

"(4) A notice under subsection (1) may relate to 2 or more prescribed pipeline acts.

"(5) If —

- (a) the Minister determines in writing that 2 or more prescribed pipeline acts constitute or form part of a project to be carried out in a specified area;
- (b) the notice under subsection (1) relating to those acts —
 - (i) identifies the project;
 - (ii) states that the acts to which the notice relates constitute or form part of the project (whether or not the notice separately specifies the area that each act will affect); and
 - (iii) has attached to it a copy of the determination,

this Part applies to all of those prescribed pipeline acts as if they were a single act.

"(6) Where —

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- (a) the Minister makes a determination under subsection (5) (a); and
- (b) there are 2 or more applicants for the prescribed pipeline acts that constitute or form part of the project,

the Minister must specify in the determination which of those applicants is, for the purposes of this Part, to be the applicant for the single act and this Part applies accordingly.

"(7) In this section —

'objection period' means —

- (a) if the prescribed pipeline act is an act to which section 24MD(6B) of the Native Title Act applies — 2 months after the day on which the notice is served on the person; or
- (b) if the prescribed pipeline act is an act to which section 43A of the Native Title Act applies — 30 days after the day on which the notice is served on the person;

'prescribed information' means —

- (a) the name of the applicant for the prescribed pipeline act;
- (b) the prescribed pipeline act applied for;
- (c) if relevant — the period in respect of which the relevant pipeline interest is sought;
- (d) either —
 - (i) a description of the land or waters in respect of which the application is made sufficient to enable an interested person to determine its location; or
 - (ii) a map that indicates that land or waters by reference to the boundaries of existing landholdings or geographical features; and
- (e) the information (if any) prescribed by the regulations.

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"43F. RESPONSE TO OBJECTIONS

"(1) As soon as practicable after an objection to a prescribed pipeline act is lodged in accordance with a statement referred to in section 43E(3), the Minister must advise the applicant for the prescribed pipeline act in writing of the objection and the grounds for the objection.

"(2) Within 21 days after being advised of an objection under subsection (1), an applicant must, by notice in writing, invite the registered native title claimant or registered native title body corporate who lodged the objection to consult with the applicant in accordance with section 43G(1).

"(3) The regulations may make provision in relation to the procedures to be observed during consultation under subsection (2), including in relation to —

- (a) meetings (whether scheduled by the applicant or the Minister under section 43J) for the purposes of section 43G;
- (b) mediation under section 43G(4); and
- (c) the costs relating to the holding of those meetings or the conduct of that mediation.

"43G. CONSULTATION AND MEDIATION

"(1) An applicant for a prescribed pipeline act must consult with any registered native title claimants or registered native title bodies corporate who object to the prescribed pipeline act about ways of minimising the impact of the prescribed pipeline act on registered native title rights and interests in relation to the affected land or waters, including (if relevant) about any access to that land or those waters or the way in which anything authorised by the prescribed pipeline act might be done (in this section called "impact minimisation").

"(2) For the purposes of subsection (1), an applicant is to be taken to have consulted with a claimant or body if the applicant attends at least 2 meetings (whether scheduled by the applicant or by the Minister under section 43J) for the purpose of consulting with the claimant or body about impact minimisation.

"(3) For the purposes of subsection (2), the scheduled date of the second meeting is to be at least 14 days after the scheduled date of the first meeting.

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"(4) If the prescribed pipeline act is an act to which section 43A of the Native Title Act applies, subject to section 43H, the applicant and the claimant or body may agree to refer the matter of impact minimisation to mediation at any time after the second scheduled meeting referred to in subsection (2).

"(5) For the purposes of subsection (4) —

- (a) the parties may agree on the appointment of a mediator; or
- (b) if no agreement is reached — either party may apply to the Tribunal for the appointment of a mediator under section 30 of the *Lands and Mining Tribunal Act*.

"43H. APPLICATION TO TRIBUNAL

"At any time after —

- (a) the second scheduled meeting referred to in section 43G(2); or
- (b) the expiry of 30 days from the date on which a matter was referred to mediation under section 43G(4),

either the applicant for the prescribed pipeline act or the registered native title claimant or registered native title body corporate objecting to the prescribed pipeline act may apply to the Tribunal to have the objection to the prescribed pipeline act heard.

"43J. INQUIRY BY MINISTER

"(1) After the expiry of 60 days from the lodgement of an objection under section 43E(3), the Minister may inquire of the applicant for the prescribed pipeline act whether the scheduled meetings referred to in section 43G(2) have been held and —

- (a) if neither meeting has been held, may schedule 2 meetings in accordance with section 43G(3); or
- (b) if only one meeting has been held, may schedule another meeting in accordance with section 43G(3),

to enable the applicant to consult with the registered native title claimant or registered native title body corporate who lodged the objection for the purposes of section 43G(1).

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"(2) If, on inquiry after the expiry of 120 days from the lodgement of an objection under section 43E(3), the Minister is not satisfied that sufficient progress is being made in any consultation between the applicant for the prescribed pipeline act and the registered native title claimant or registered native title body corporate who lodged the objection, the Minister may refer the objection to the Tribunal for hearing.

"43K. COMPLIANCE WITH RECOMMENDATIONS OF TRIBUNAL

"(1) Where the Tribunal makes a recommendation —

- (a) upholding an objection to a prescribed pipeline act so far as it affects registered native title rights and interests; or
- (b) that contains conditions about the doing of a prescribed pipeline act that relate to registered native title rights and interests,

the Minister must comply with the recommendation unless the Minister —

- (c) has consulted the Minister responsible for indigenous affairs (being the Minister to whom responsibility for aboriginal development is allotted under an Administrative Arrangements order);
- (d) has taken the consultation into account; and
- (e) is satisfied that it is in the interests of the Territory not to comply with the recommendation.

"(2) In subsection (1), 'in the interests of the Territory' includes —

- (a) for the social or economic benefit of the Territory (including of Aboriginal peoples and Torres Strait Islanders); and
- (b) in the interests of the relevant region or locality in the Territory.

"43L. JUDICIAL REVIEW

"(1) A person aggrieved by a decision of the Minister under this Act to do a prescribed pipeline act where the prescribed pipeline act affects registered native title rights and interests may apply to the Supreme Court for judicial review of the decision.

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"(2) On receipt of an application under subsection (1), the Supreme Court may review the Minister's decision on questions of law only.

"(3) In this section, 'person aggrieved' means a registered native title claimant or registered native title body corporate -

(a) whose registered native title rights and interests are affected by the prescribed pipeline act; and

(b) who lodged an objection to the prescribed pipeline act under section 43E(3).

"43M. WITHDRAWAL OF OBJECTIONS

"(1) An objection lodged under section 43E(3) may be withdrawn at any time.

"(2) If all objections to a prescribed pipeline act lodged under section 43E(3) are withdrawn, the Minister may proceed to determine the application for the prescribed pipeline act.

"43N. COMPENSATION

"(1) Compensation for the effect of a prescribed pipeline act on native title -

(a) is payable to the native title holder by the holder of the pipeline interest to which the prescribed pipeline act relates;

(b) includes compensation for the effect on native title of activities done under that pipeline interest as a result of the prescribed pipeline act.

"(2) A native title holder or registered native title claimant who intends to claim compensation for the effect of a prescribed pipeline act on their registered native title rights and interests must make the claim within 3 years after the doing of the prescribed pipeline act.

"(3) Compensation is not payable to a registered native title claimant unless and until the native title claimed by the claimant is determined to exist.

"(4) In the event of a dispute about the compensation payable under subsection (1), the person liable to pay compensation or the person to whom compensation is payable may refer the dispute to the Tribunal.

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"(5) To avoid doubt —

- (a) compensation is payable to a person under subsection (1); and
- (b) a claim for compensation may be made by a person under subsection (2),

whether or not the person lodged an objection to the prescribed pipeline act under section 43E(3).

"(6) A reference in this section to the payment of compensation is to be read as including a reference to the giving of compensation in a form other than money, including the transfer of property and the provision of goods and services.

43P. ENERGY PIPELINES COMPENSATION (NATIVE TITLE) FUND

"(1) The Minister must establish and maintain the Energy Pipelines Compensation (Native Title) Fund (in this section called 'the Fund').

"(2) A person who is, may be, will or may become liable under section 43N to pay compensation for the effect of a prescribed pipeline act on native title —

- (a) may at any time; and
- (b) must if required to do so under this Act or another law of the Territory,

pay into the Fund an amount in respect of that compensation.

"(3) Moneys paid into the Fund under subsection (2) and interest earned on those moneys are to be used for the following purposes:

- (a) to pay amounts in respect of the compensation to the native title holder;
- (b) to indemnify the Territory in respect of compensation for the effect of the prescribed pipeline act on native title paid to the native title holder by the Territory under the Native Title Act.

"(4) Where the Minister is satisfied that it is no longer necessary to retain in the Fund an amount for a purpose specified in subsection (3), the Minister must return the amount and the interest earned on that amount to the person who paid it into the Fund.

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"(5) For the purposes of this section, the Treasurer must open an official bank account under the *Financial Management Act* and all moneys paid into the Fund are to be paid into that account."

9. NEW SECTIONS

The Principal Act is amended by inserting after section 67A the following:

"67B. COMPENSATION: TIME LIMIT ON CLAIMS

"A claim for compensation payable under this Act that is not made within 3 years after the doing of the activity giving rise to the claim is, by virtue of this section, statute barred.

"67C. COMPENSATION OTHER THAN MONEY IN RESPECT OF NATIVE TITLE

"Where —

- (a) compensation is payable under this Act to a native title holder for the affect of a prescribed pipeline act on native title; and
- (b) the native title holder requests that the whole or part of the compensation should be in a form other than money,

the person liable to pay the compensation must —

- (c) consider the request; and
- (d) negotiate in good faith in relation to the request."

10. TRANSITIONAL PROVISION: PENDING APPLICATIONS

(1) This section applies in relation to applications for prescribed pipeline acts within the meaning of section 43A of the Principal Act as amended by this Act that were pending immediately before the commencement of this section.

(2) An application is to be taken to comply with section 43D of the Principal Act as amended by this Act if the applicant provides the information referred to in that section in writing to the Minister within 14 days after being notified in writing by the Minister that the information is required or within the further time allowed in writing by the Minister.

(3) The Minister or an applicant is to be taken to have complied with section 43E of the Principal Act as

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amended by this Act if the Minister or the applicant (as the case requires) serves written notice of the making of the application on the persons referred to in section 43D(a), (b) and (c) of that Act within -

- (a) in the case of the Minister - 28 days after receiving from the applicant the information referred to in subsection (2); or
- (b) in the case of the applicant - 14 days after being advised in writing by the Minister that those persons are to be served or within the further time allowed in writing by the Minister.

11. REGULATIONS

- (1) The Administrator may make regulations -
 - (a) amending this Act (other than this section), the *Energy Pipelines Act* or any other Act in relation to any matter arising from, connected with or consequential upon the enactment of the *Native Title Amendment Act 1998* of the Commonwealth in so far as that Commonwealth Act affects the doing under the *Energy Pipeline Act* of a future act within the meaning of section 233 of that Commonwealth Act; or
 - (b) containing savings or transitional provisions connected with or consequential upon the enactment of this Act or an amendment under paragraph (a)

(2) Regulations made under subsection (1) may be expressed to have taken effect on a day earlier than the day on which the regulations are made, other than a day earlier than the day on which this section commences.

(3) The Administrator may only make regulations under subsection (1) during the 12 months commencing on the day on which this section commences.