

NORTHERN TERRITORY OF AUSTRALIA

PETROLEUM AMENDMENT BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Petroleum 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 *Petroleum Amendment Act 1998*.

2. COMMENCEMENT

(1) Sections 3, 4, 5, 7, 8, 9, 10, 11, 12 and 14 come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(2) Sections 6, 13 and 15, to the extent 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 6, 13 and 15, to the extent 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*.

(4) Section 16 comes into operation on the commencement of the *Validation of Titles and Actions Amendment Act 1998*.



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3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 5 of the Principal Act is amended —

- (a) by inserting after the definition of "access authority area" in subsection (1) the following:

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

'alternative provision area' has the meaning given in section 43A(2) of the Native Title Act;";

- (b) 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;

'owner', in relation to land, means the owner of any estate or interest (whether legal or equitable) in the land and includes a native title holder in relation to the land;";

- (c) by inserting after the definition of "petroleum" in subsection (1) the following:

"'petroleum interest' has the meaning given in section 57B;";

- (d) by inserting after the definition of "petroleum pool" in subsection (1) the following:

"'prescribed petroleum act' has the meaning given in section 57B;";

- (e) by omitting paragraph (b) of the definition of "private land" in subsection (1) and substituting the following:

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"(b) land (not being an alternative provision area) in respect of which there are native title rights and interests;"

(f) by inserting after the definition of "Register" 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;"

(g) by inserting after the definition of "repealed Act" in subsection (1) the following:

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

(h) 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. TERM OF PRODUCTION LICENCE

Section 50 of the Principal Act is amended by omitting "a period of 25 years" and substituting "either 21 or 25 years as determined by the Minister".

6. NEW PART

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

"PART IIA — PRESCRIBED PETROLEUM ACTS AFFECTING REGISTERED NATIVE TITLE RIGHTS AND INTERESTS

"57B. PRESCRIBED PETROLEUM ACTS, &c.

(1) For the purposes of this Part, subject to subsection (2), the following acts are prescribed petroleum acts:

(a) the grant or renewal of a permit under Division 2 of Part II;

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- (b) the grant or renewal of a retention licence under Division 3 of Part II;
- (c) the renewal of a production licence under section 52;
- (d) the grant or renewal of an access authority under Division 5 of Part II;
- (e) the variation of the area of a licence under section 69(1)(a).

"(2) A renewal referred to in subsection (1) is not a prescribed petroleum act if it is -

- (a) a renewal to which section 26D or 24IC of the Native Title Act applies; or
- (b) a past act by virtue of section 228(4) or (9) of the Native Title Act.

"(3) For the purposes of this Part, a petroleum interest is the permit, licence or authority granted, renewed or varied by a prescribed petroleum act.

"57C. APPLICATION

"(1) This Part applies in relation to a prescribed petroleum 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 that is an alternative provision area.

"(2) Subject to subsections (3) and (5), 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 petroleum act may be lodged under this Part or another Part; or
- (b) a question about compensation for the effect of a prescribed petroleum act on native title may be referred to a person or body under this Part or another Part,

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

"57D. ACT VALID IF PROCEDURES COMPLIED WITH

(1) A prescribed petroleum 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 petroleum act is done in respect of land; and
- (b) the prescribed petroleum act is, to the extent that it affects native title in relation to part of the land, invalid,

then —

- (c) the invalidity does not affect the validity of the prescribed petroleum act to the extent that it affects native title in relation to the remainder of the land; and
- (d) the prescribed petroleum act has effect as if it had been done only in relation to the remainder of the land.

"57E. FORM OF APPLICATION

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

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

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"57F. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

"(1) Within 14 days after the notification event or within the further time allowed in writing by the Minister —

- (a) if the prescribed petroleum 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 57D(a), (b) and (c); or
- (b) if the prescribed petroleum 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 57D(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 may lodge, in writing with the Minister within the specified objection period —
 - (i) if the prescribed petroleum act is an act to which section 24MD(6B) of the Native Title Act applies — an objection to the prescribed petroleum act that may include an objection to the prescribed petroleum act so far as it affects their registered native title rights and interests;
 - (ii) if the prescribed petroleum act is an act to which section 43A of the Native Title Act applies — an objection to the prescribed petroleum act so far as it affects their registered native title rights and interests; and
 - (iii) if the prescribed petroleum act will entitle the applicant to a production licence (whether that entitlement is

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subject to conditions or otherwise) — an objection to the grant of the production licence so far as it affects their registered native title rights and interests; and

- (b) an objection to the prescribed petroleum 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 petroleum acts.

"(5) If —

- (a) the Minister determines in writing that 2 or more prescribed petroleum 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 petroleum acts as if they were a single act.

"(6) Where —

- (a) the Minister makes a determination under subsection (5)(a); and
- (b) there are 2 or more applicants for the prescribed petroleum 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 —

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'notification event' means —

- (a) if the prescribed petroleum act is the grant of a permit under section 20 — the notification of the applicant in writing that, subject to compliance with this Part, the Minister proposes to grant the permit to the applicant; or
- (b) in the case of any other prescribed petroleum act — the lodgement of the application for the prescribed petroleum act;

'objection period' means —

- (a) if the prescribed petroleum 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 petroleum 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 petroleum act;
- (b) the prescribed petroleum act applied for;
- (c) if relevant — the period in respect of which the relevant petroleum interest is sought;
- (d) either —
 - (i) a description of the land 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 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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"57G. RESPONSE TO OBJECTIONS

"(1) As soon as practicable after an objection to a prescribed petroleum act is lodged in accordance with a statement referred to in section 57F(3), the Minister must advise the applicant for the prescribed petroleum 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 57H(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 57K) for the purposes of section 57H;
- (b) mediation under section 57H(4); and
- (c) the costs relating to the holding of those meetings or the conduct of that mediation.

"57H. CONSULTATION AND MEDIATION

"(1) An applicant for a prescribed petroleum act must consult with any registered native title claimants or registered native title bodies corporate who object to the prescribed petroleum act about ways of minimising -

- (a) the impact of the prescribed petroleum act; and
- (b) if the prescribed petroleum act will entitle the applicant to a production licence (whether that entitlement is subject to conditions or otherwise) - the impact of the grant of the production licence,

on registered native title rights and interests in relation to the affected land, including (if relevant) about any access to that land or the way in which anything authorised by the prescribed petroleum act or the grant of the licence 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

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Minister under section 57K) 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.

"(4) If the prescribed petroleum act is an act to which section 43A of the Native Title Act applies, subject to section 57J, 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*.

"57J. APPLICATION TO TRIBUNAL

"At any time after –

(a) the second scheduled meeting referred to in section 57H(2); or

(b) the expiry of 30 days from the date on which a matter was referred to mediation under section 57H(4),

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

"57K. INQUIRY BY MINISTER

"(1) After the expiry of 60 days from the lodgement of an objection under section 57F(3), the Minister may inquire of the applicant for the prescribed petroleum act whether the scheduled meetings referred to in section 57H(2) have been held and –

(a) if neither meeting has been held, may schedule 2 meetings in accordance with section 57H(3); or

(b) if only one meeting has been held, may schedule another meeting in accordance with section 57H(3),

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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 57H(1).

"(2) If, on inquiry after the expiry of 120 days from the lodgement of an objection under section 57F(3), the Minister is not satisfied that sufficient progress is being made in any consultation between the applicant for the prescribed petroleum 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.

"57L. COMPLIANCE WITH RECOMMENDATIONS OF TRIBUNAL

"(1) Where the Tribunal makes a recommendation -

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

"57M. JUDICIAL REVIEW

"(1) A person aggrieved by a decision of the Minister under this Act to do a prescribed petroleum act

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where the prescribed petroleum act affects registered native title rights and interests may apply to the Supreme Court for judicial review of the decision.

"(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 petroleum act; and
- (b) who lodged an objection to the prescribed petroleum act under section 57F(3).

"57N. WITHDRAWAL OF OBJECTIONS

"(1) An objection lodged under section 57F(3) may be withdrawn at any time.

"(2) If all objections to a prescribed petroleum act lodged under section 57F(3) are withdrawn, the Minister may proceed to determine the application for the prescribed petroleum act.

"57P. COMPENSATION

"(1) Compensation for the effect of a prescribed petroleum act on native title —

- (a) is payable to the native title holder by the holder of the petroleum interest to which the prescribed petroleum act relates; and
- (b) includes compensation for the effect on native title of activities done under that petroleum interest as a result of the prescribed petroleum act.

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

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"(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.

"(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 petroleum act under section 57F(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.

57Q. PETROLEUM COMPENSATION (NATIVE TITLE) FUND

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

"(2) A person who is, may be, will or may become liable under section 57P to pay compensation for the effect of a prescribed petroleum 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 petroleum act on native title paid to the native title holder by the Territory under the Native Title Act.



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"(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.

"(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."

7. UNIT DEVELOPMENT

Section 69 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) The Minister may only vary the area of a licence under subsection (1)(a) on the application of the licensee."

8. SECURITY

Section 79 of the Principal Act is amended by omitting from subsection (3) "the security to pay for any work required by or under this Act to be carried out by the former permittee or licensee that has not been so carried out" and substituting the following:

"the security -

- (a) to pay for any work required by or under this Act to be carried out by the former permittee or licensee that has not been so carried out; or
- (b) to indemnify the Territory in respect of compensation for the effect on native title of the grant of the permit or licence or any other prescribed act in respect of the permit or licence."

9. COMPENSATION TO OWNERS

Section 81 of the Principal Act is amended -

- (a) by omitting from subsection (1) "of any estate or interest (whether legal or equitable and includes native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth)";
- (b) by omitting from subsection (3) "the permittee may apply to a warden to determine that amount or benefit" and substituting "either party may refer the dispute to the Tribunal";

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(c) by omitting from subsections (4) and (5)(a) "section 82A" and substituting "section 117B";

(d) by omitting subsection (5)(b) and substituting the following:

"(b) the licensee must refer any dispute about compensation to the Tribunal."; and

(e) by omitting subsection (8) and substituting the following:

"(8) In this section, 'Registered proprietor', in relation to land, means -

(a) a person who appears by the Register maintained under the *Real Property Act* to be the Registered proprietor of the land; or

(b) a person who is registered on the National Native Title Register maintained under the Native Title Act as holding the native title rights and interests in that land."

10. COMPENSATION FOR RIGHT OF ACCESS

Section 82 of the Principal Act is amended -

(a) by omitting from subsection (1) "of any estate or interest (whether legal or equitable and includes native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth)"; and

(b) by omitting from subsection (2) "the matter to a warden who shall determine the compensation to which the owner or occupier is entitled" and substituting "the dispute to the Tribunal".

11. REPEAL

Sections 82A and 83 of the Principal Act are repealed.

12. NEW SECTIONS

The Principal Act is amended by inserting before section 118 in Part VI the following:

"117A. 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.



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"117B. 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 petroleum 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."

13. TRANSITIONAL PROVISION: PENDING APPLICATIONS FOR
PRESCRIBED PETROLEUM ACTS

(1) This section applies in relation to applications for prescribed petroleum acts within the meaning of section 57B 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 57E 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 57F of the Principal Act as 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 57E(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.



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14. TRANSITIONAL PROVISION: PENDING APPLICATIONS TO
WARDEN FOR COMPENSATION

(1) In this section —

"amended Act" means the Principal Act as amended by
this Act;

"former Act" means the Principal Act as in force
immediately before the commencement of this
section;

"pending application" means —

(a) an application to a warden under section
81(3) of the former Act to determine an
amount or other benefit by way of
compensation; or

(b) an application to a warden under section
81(5)(b) or 82(2) of the former Act to
determine the compensation to which an
owner or occupier is entitled,

that was pending immediately before the
commencement of this section.

(2) The former Act continues to apply in relation
to pending applications in respect of land in relation to
which there are no native title rights and interests
until the Minister, by notice in the Gazette, declares
that the former Act no longer applies in relation to
those applications.

(3) The amended Act applies in relation to —

(a) pending applications in respect of land in
relation to which there are native title rights
and interests ; and

(b) pending applications in respect of land in
relation to which, by virtue of a declaration
under subsection (2), the former Act has ceased
to apply,

as if those pending applications had been made to the
Tribunal.

15. REGULATIONS

(1) The Administrator may make regulations —

(a) amending this Act (other than this section),
the *Petroleum Act* or any other Act in relation
to any matter arising from, connected with or



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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 *Petroleum 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.

16. REPEAL OF *PETROLEUM AMENDMENT ACT 1997*

The *Petroleum Amendment Act 1997* is repealed.

