PETROLEUM LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019

SERIAL NO. 116…….

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MNISTER FOR PRIMARY INDUSTRY AND RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

This bill amendments the *Petroleum Act 1984* and the *Petroleum (Environment) Regulations 2016.*

The purpose of this Bill is to make amendments to the *Petroleum Act 1984* and the *Petroleum (Environment) Regulations 2016* to give effect to a number of the recommendations made by the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory ("***Inquiry***"). These amendments include the requirement of the Minister to consider the principles of ecologically sustainable development in making certain decisions under the Act and Regulations; by requiring the Minister to give public notice of proposed land release (and allowing public submissions) and by empowering regulations to be made in relation to land access, compensation and environmental securities.

NOTES ON CLAUSES

PART 1: PRELIMINARY MATTERS

Clause 1. Short Title

This is a standard clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Petroleum Legislation Miscellaneous Amendments Act 2019*.

Clause 2. Commencement

This is a standard clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by *Gazette* notice.

PART 2: AMENDMENT OF PETROLEUM ACT 1984

Clause 3. Act amended

This is a standard clause which provides that this Part amends the *Petroleum Act 1984*.

Clause 4. Section 5 amended (Interpretation)

This clause amends section 5 to inserts two new definitions into the Act being a definition of ***environment*** and a definition ***principles of ecologically sustainable development*** by reference to the *Environment Protection Act 2019.* The reference to the definitions within the *Environment Protection Act 2019* ensures consistency across the statute book for these important concepts.

Clause 5. Part IA inserted

This clause inserts a new Part and a new section into the Act. The proposed new section requires the Minister consider and apply the principles of ecologically sustainable development in making certain decisions under the Act and prescribed by regulation. The decisions are identified in Schedule 1 of the Act, prescribed in regulations made under the Act and includes decisions made under a direction given by the Minister under section 71 of the Act. Consistent with the *Environment Protection Act 2019* the Minister is not required to specify how the principles have been considered or applied when stating the reasons for a decision. However, given the existing requirements under the *Petroleum (Environment) Regulations 2016*, how the principles are considered may be required to be expressly provided (for example as required by regulation 12(3)(a)(ii) of the *Petroleum (Environment) Regulations 2016*).

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

This clause amends section 16 to insert subsection (1AA) which requires the Minister to undertake the process outlined at section 16 if the Minister intends to release specified blocks for exploration. Subsections 16(1) and (2) are also amended so that the Minister is required to give notice publicly by a newspaper circulating throughout the Territory and the notice must invite submissions regarding the release of specified blocks. In accordance with recommendation 14.2 of the Inquiry there is no limitation on who can make a submission. This clause also inserts subsection (2A) which provides that the submissions which can be made to the Minister are in relation to whether exploration and industry can co-exist and whether the land is suitable for exploration.

Clause 7. Section 16A inserted

This clause inserts a new section which requires the Minister to consider any submissions regarding the release of specified blocks for exploration, any applications received and determine the blocks to be released (if any). The Minister must publish their determination online. The determination will also be subject to judicial review.

Clause 8. **Section 18 amended (Notice of application for exploration permit)**

Section 18(3) currently provides that a person who does not have an estate or interest in relation to the land comprised in, or land contiguous with land comprised in an exploration permit application area, is not entitled to lodge an objection to the grant of an exploration permit. In accordance with recommendation 14.10 of the Inquiry this clause amends section 18 to remove the limitation on who is entitled to lodge an objection to the grant of an exploration permit by amending section 18(1)(e) and omitting subsection (3).

Clause 9. **Section 19 amended (Objections)**

This clause makes consequential amendments to section 19(1) to remove the reference to section 18(3) that was omitted by clause 8 above. Additionally this clause inserts subsection (2A) which requires the Minister to publish any objection to the grant of an exploration permit online. This is in accordance with recommendation 14.10 of the Inquiry and is for the purposes of increasing transparency and accountability.

Clause 10. **Section 28 amended (Variation etc. of condition of exploration permit)**

This clause inserts subsection (1A) which requires that an application to vary, suspend or waive a condition on a permittee's exploration permit must be accompanied by the prescribed fee. The Schedule in the *Petroleum Regulations 1994* prescribes the fee for this application.

Clause 11. **Section 41 amended (Variation, &c., of conditions of retention licence)**

This clause inserts subsection (1A) which requires that an application to vary, suspend or waive a condition on a retention licensee's retention licence must be accompanied by the prescribed fee. The Schedule in the *Petroleum Regulations 1994* prescribes the fee for this application.

Clause 12. **Section 55 (Variation, &c., of conditions of production licence)**

This clause inserts subsection (1A) which requires that an application to vary, suspend or waive a condition on a production licensee's production licence must be accompanied by the prescribed fee. The Schedule in the *Petroleum Regulations 1994* prescribes the fee for this application.

Clause 13. Section 57A amended (Access authorities)

This clause inserts subsection (2A) which requires that an application for an access authority must be accompanied by the prescribed fee. The Schedule in the *Petroleum Regulations 1994* prescribes the fee for this application.

Clause 14. Section 57ABA amended (Judicial review of decision or determination)

This Bill, at clause 22, inserts a new Schedule 1 into the Act. This clause makes the consequential amendments to this section to refer to Schedule 2 (where the decisions or determinations subject to judicial review are listed).

Clause 15. Section 73 amended (Surrender)

This clause inserts subsection (1B)(c) which requires that an application under subsection (1) or (1A) must be accompanied by the prescribed fee. The Schedule in the *Petroleum Regulations 1994* prescribes the fee for these applications. This clause also makes additional amendments to the section to modernise the language of the section.

Clause 16. Section 81 amended (Compensation to owners)

Recommendation 14.8 of the Inquiry provides that compensation in certain circumstances should be calculated by reference to the impact of the development on the pastoral lease and the pastoral lessee and outlines examples of the types of compensation. This clause inserts subsection (1)(c) which provides that the heads of compensation payable to the owner or occupier of land who has a registered interest in land may now be increased by regulation to account for additional circumstances where compensation is payable by the holder of a petroleum interest.

This clause omits subsection (3) regarding the Tribunal's jurisdiction to deal with disputes about compensation. The Tribunal maintains jurisdiction to deal with disputes regarding compensation and this referral of jurisdiction is now at section 82A (see clause 18 below).

This clause also inserts subsection (7A) which will allow regulations to be made to prescribe how compensation payable under section 81 may be calculated. These amendments are consistent with recommendation 14.8 of the Inquiry.

Clause 17. Section 82 amended (Compensation for right of access)

Consistently with the amendments to section 81, this clause inserts subsection (5) which will allow regulations to be made to prescribe how compensation payable under section 82 may be calculated and provides that the Tribunal's jurisdiction to deal with disputes regarding compensation is now at section 82A (see clause 18 below).

Clause 18. Section 82A inserted

This clause inserts section 82A which replicates the provisions previously at subsection 81(3) and subsections 82(5) and (6) and consolidates those provisions regarding Tribunal's jurisdiction to deal with disputes about compensation under the Act. The section also provides that the Tribunal may also have jurisdiction to deal with other disputes prescribed by regulation.

Clause 19. Section 111 replaced

This clause replaces section 111 and prohibits the permittee and licensee from undertaking certain activities and operations. The proposed subsection (1)(a) is a replacement of the existing subsections 111(a) - (c) (inclusive). Proposed subsection (1)(b) prohibits the construction of a well, wellhead, pipeline or processing facility within 2km of a residence. Proposed subsection (1)(c) prohibits the construction of a well or well pad within 1km of a designated bore without obtaining consent the parties listed in subsection (3) including the owner of the bore.

Subsection (5) introduces definitions for the purpose of section 111 and includes a definition of designated bore which is consistent with the *Water Act 1992.* The designated bore must be a current bore or for which the relevant applications have been lodged with the Controller under the *Water Act 1992*. These amendments are in accordance recommendation 7.11 and 10.2 of the Inquiry. These amendments also create consistency regarding set-backs with the code of practice made by the Minister under regulation 4A of the *Petroleum (Environment) Regulations 2016*.

Clause 20. Section 117AAB amended (Interpretation)

This clause omits the definition of ***environment***; which is now defined at section 5 of the Act.

Clause 21. Section 118 amended (Regulations)

This clause amends section 118 to empower the Administrator to make regulations in relation to land access agreements and environmental securities. This clause broadly outlines the matters which may be prescribed as part the relevant scheme. These amendments are consistent with recommendations 14.6, 14.7, 14.8 and 14.13 (in part) of the Inquiry and will allow for those recommendations to be implemented through regulations made under this Act.

Clause 22. Part VII, Division 4 and Schedule 1 inserted

This clause inserts Part VII, Division 4 to the Act which provides for a number of transitional matters that are required as a result of requiring the Minister to consider the principles of ecologically sustainable development in making certain decisions under the Act. In particular the proposed new sections provide that the Minister, for a number of decisions in relation to applications that have already been lodged under the Act, will not have to consider the principles of ecologically sustainable development.

This clause also inserts Schedule 1 which lists the decisions or determinations for which the principles of ecologically sustainable development including a decision to release blocks for exploration (section 16A), the determination to grant or refuse an exploration permit (section 20(3)) and a decision requiring security to be lodged (section 79(1)).

Clause 23. Schedule amended (Judicial Review of decision or determination)

This clause amends the heading of the Schedule to become Schedule 2. This clause also inserts a reference to a new determination which will be subject to judicial review (being the determination to release blocks for exploration under section 16A).

PART 3: AMENDMENT OF PETROLEUM (ENVIRONMENT) REGULATIONS 2016

Clause 24. Regulations amended

This is a standard clause which provides that this Part amends the *Petroleum (Environment) Regulations 2016*.

Clause 25. Regulation 3 amended (Definitions)

This clause omits the definitions of ***environment*** and ***principles of ecologically sustainable development***; those concepts are now defined in section 5 of the Act.

Clause 26. Regulation 4 repealed (Principles of ecologically sustainable development)

This clause repeals regulation 4; the Act defines the principles of ecologically sustainable development.

Clause 27. Regulation 5A inserted

This clauses lists those decisions which, in making, the Minister must consider the principles of ecologically sustainable development in accordance with section 6A(1) of the Act.

Clause 28. Regulation 9 amended (Approval criteria for plan)

This clause omits subregulation (2) which requires the Minister to take into account the principles of ecologically sustainable development. This is not required given the enactment of section 6A in the Act.

PART 4: REPEAL OF ACT

Clause 29. Repeal of Act

This is a standard clause that provides that the *Petroleum Legislation Miscellaneous Amendments Act 2019* is repealed on the day after it commences.