

NORTHERN TERRITORY OF AUSTRALIA
PETROLEUM AMENDMENT REGULATIONS

Regulations 1999, No. 13

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1999, No. 13

Regulations under the *Petroleum Amendment Act 1998*

I, NEIL RAYMOND CONN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Petroleum Amendment Act 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998*.

Dated 16 April 1999.

N R CONN
Administrator

By His Honour's Command

DENIS G BURKE
Chief Minister

PETROLEUM AMENDMENT REGULATIONS

1. Citation

These Regulations may be cited as the Petroleum Amendment Regulations.

2. Principal Act

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

3. Interpretation

Section 5 of the Principal Act is amended by inserting after the definition of "native title objection" in subsection (1) the following:

" 'Native Title Registrar' has the meaning given in section 253 of the Native Title Act;".

4. Notice of application for permit

Section 18 of the Principal Act is amended by omitting from subsection (1)(e) "after the date of publication of the notice" and substituting "after the date specified in the notice (being 21 days after the application was lodged)".

5. Notification of native title holders etc.

Section 57F of the Principal Act is amended –

- (a) by inserting in subsection (1)(a) and (b) "and on the Native Title Registrar" after "section 57E(a), (b) and (c)";
- (b) by omitting from subsection (3)(a) "after being served with the notice" and substituting "after the date specified in the notice (being 21 days after the notification event)";
- (c) by omitting from subsection (3)(b) "would" and substituting "is likely to";
- (d) by omitting subsection (6) and substituting the following:

"(6) If, within 3 months after the date specified in the notice served on the representative Aboriginal/Torres Strait Islander body or bodies under subsection (1) (being 21 days after the notification event), a person (other than a person served under subsection (1)) advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land, the person may, within 4 months after the date so specified, lodge an objection to the prescribed petroleum act.

"(6A) An objection lodged under subsection (6) is to be taken not to have been lodged if, by the end of 4 months from the date so specified in the notice

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served on the representative Aboriginal/Torres Strait Islander body or bodies under subsection (1), the Native Title Registrar –

- (a) has not accepted the claim for registration; or
- (b) has not yet decided whether or not to accept the claim for registration."; and
- (e) by omitting from subsection (7) the definition of "notification event" and substituting the following:
" 'notification event' means the lodgement of the application for the prescribed petroleum act;"

6. Consultation and mediation

Section 57H of the Principal Act is amended –

- (a) by omitting from subsection (2) "7 days" and substituting "14 days"; and
- (b) by adding at the end the following:

"(6) Nothing in this section is to be taken to prevent the parties from commencing consultations before the period referred to in subsection (2) commences.

"(7) The parties are encouraged to consult with a view to resolving objections and nothing in this section is to be taken to prevent the parties from doing so."

7. Inquiry by Minister

Section 57K of the Principal Act is amended by omitting "the applicant" and substituting "the parties to the consultations".

8. Referral of objections to Tribunal by Minister

Section 57KA of the Principal Act is amended –

- (a) by omitting "At any time" and substituting "(1) At any time"; and
- (b) by adding at the end the following:

"(2) In deciding whether to exercise his or her discretion under subsection (1), without limiting the relevant matters that the Minister may take into account, the Minister must inquire of the parties as to the progress of the consultations or mediation (as the case may be) and must take the responses received (if any) into account."

9. New section

The Principal Act is amended by inserting after section 57KA the following:

"57KB. Criteria for making recommendation

"(1) In making a recommendation in relation to a prescribed petroleum act, the Tribunal must take into account all matters that the Tribunal considers relevant, including –

- (a) all objections lodged with and submissions made to the Tribunal in relation to the effect that the prescribed petroleum act will have or is likely to have on registered native title rights and interests;
- (b) ways of minimising the impact of the prescribed petroleum act on registered native title rights and interests, including in relation to –
 - (i) access to the land or waters on which it is proposed to do the act; and
 - (ii) ways in which the act might be done;
- (c) the economic or other significance of the prescribed petroleum act to the Territory and to the region in which the land or waters on which it is proposed to do the act are located, including the Aboriginal peoples who live in that region; and
- (d) the public interest in the doing of the prescribed petroleum act.

"(2) Before making a recommendation in relation to a prescribed petroleum act –

- (a) the Tribunal must inquire of the parties to the proceeding whether there are any issues relevant to its recommendation in relation to which the parties have reached agreement; and
- (b) if such an agreement has been reached and the parties consent to the Tribunal doing so, the Tribunal must (if relevant) take the agreement into account."

10. Compliance with recommendations of Tribunal

Section 57L of the Principal Act is amended –

- (a) by inserting after subsection (1B) the following:

"(1C) The Minister must ensure that, prior to consultations under subsection (1B)(a), the Tribunal's recommendation and the Tribunal's reasons for

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making the recommendation are provided to the Minister responsible for indigenous affairs."; and

- (b) by omitting from subsection (2)(a) "subsection (1B)(a) and (b)" and substituting "subsections (1B)(a) and (b) and (1C)"; and
- (c) by inserting after subsection (2) the following:

"(2A) Within 28 days after being notified under section 70A of the decision to do a prescribed petroleum act that is in accordance with a decision of the Minister of a kind referred to in subsection (2)(c) or (d), any of the following persons may in writing request the Minister for reasons for that decision:

- (a) a registered native title claimant or registered native title body corporate who lodged a native title objection;
- (b) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act and holds native title on trust for a person who lodged a native title objection in his or her capacity as a registered native title claimant;
- (c) a person who lodged a native title objection in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made;
- (d) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged a native title objection,

unless the objection was subsequently withdrawn.

"(2B) Within 28 days after receiving a request in accordance with subsection (2A), the Minister must provide written reasons for the decision to the person who requested them.

"(2C) Nothing in this section is to be taken to affect the Minister's discretion to decide not to do a prescribed petroleum act, including where that discretion is exercised as a result of consultations with the Minister responsible for indigenous affairs."

11. Judicial review

Section 57M of the Principal Act is amended –

- (a) by omitting from subsection (2B) all the words after "the Tribunal," and substituting "the recommendation, that part of the decision of the Tribunal to make the recommendation and the Tribunal's reasons for that part of its

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decision are all to be taken to form part of both the decision being reviewed and the record of the decision being reviewed";

(b) by inserting after subsection (2B) the following:

"(2C) Where in pursuance of section 57L(2B) the Minister has provided reasons for the decision being reviewed, those reasons are to be taken to form part of both that decision and the record of that decision."; and

(c) by omitting subsection (3) and substituting the following:

"(3) In this section, 'person aggrieved' means any of the following persons whose registered native title rights and interests are affected by the prescribed petroleum act:

- (a) a registered native title claimant or registered native title body corporate who lodged a native title objection;
- (b) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act and holds native title on trust for a person who lodged a native title objection in his or her capacity as a registered native title claimant;
- (c) a person who lodged a native title objection in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made;
- (d) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged a native title objection,

unless the objection was subsequently withdrawn."

12. Procedure if no objections lodged, objections withdrawn etc.

Section 57N of the Principal Act is amended by adding at the end of subsection (1) ", whether by agreement or otherwise".

13. New section

The Principal Act is amended by inserting after section 57N the following:

"57NA. Consultations may continue

"Nothing in this Part is to be taken to affect the ability of the parties to continue efforts to resolve an objection to a prescribed petroleum act until such time as the Minister decides whether or not to do the act, including while the objection is before the Tribunal."

14. Where acts may be done subject to conditions

Section 58A of the Principal Act is amended by omitting from subsection (1) "exist" and substituting "exist or may exist".

15. Notification of conditions relating to native title

Section 70A of the Principal Act is amended –

- (a) by omitting "does" and substituting "decides to do"; and
- (b) by omitting "doing of" and substituting "decision to do".

16. Transitional: applications lodged after 1 October 1998

(1) This section applies in relation to applications for prescribed petroleum acts lodged on or after 1 October 1998 but before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of the Principal Act as amended by these Regulations comes into force.

(2) An application is to be taken to comply with section 57E of the Principal Act as amended by these Regulations 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 information provided by an applicant under subsection (2) is to be current as at the date on which the applicant was notified that the information was required.

(4) An applicant is to be taken to have complied with section 57F(1)(b) of the Principal Act as amended by these Regulations if the applicant 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 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.

17. Transitional: applications pending before determination under section 43A(1)(b) of Native Title Act comes into force

(1) This section applies in relation to applications for prescribed petroleum acts –

- (a) that were pending immediately before 1 October 1998; or
- (b) lodged on or after 1 October 1998 but before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant

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provisions of the Principal Act as amended by these Regulations comes into force.

(2) Subject to subregulations (3) to (7) inclusive, section 18 of the Principal Act as amended by these Regulations applies in respect of an application.

(3) The Minister is to be taken to have complied with section 18(1) of the Principal Act as amended by these Regulations if the Minister publishes the notice referred to in that provision as soon as practicable after the Minister advises the applicant that the persons referred to in section 57E(a), (b) and (c) are to be served.

(4) For the purposes of section 18(1)(e) of the Principal Act as amended by these Regulations, the date to be specified in the notice published in accordance with subregulation (3) is the date that is 21 days after the day on which the Minister advises the applicant that the persons referred to in section 57E(a), (b) and (c) are to be served.

(5) Subject to subregulations (6) and (7), a notice that was published in respect of an application in accordance with section 18(1) of the Principal Act as in force immediately before the commencement of these Regulations is to be disregarded.

(6) An objection in respect of an application lodged under section 19(1) of the Principal Act as in force immediately before the commencement of these Regulations is to be taken to have been lodged under section 19(1) of the Principal Act as amended by these Regulations in response to the notice in respect of the application published in accordance with subregulation (3).

(7) Nothing in this section is to be taken to prevent a person who lodged an objection in respect of an application under section 19(1) of the Principal Act as in force immediately before the commencement of these Regulations from lodging a further objection in respect of the same application under section 19(1) of the Principal Act as amended by these Regulations.

18. Amendment of *Lands and Mining Tribunal Act*

Section 22A of the *Lands and Mining Tribunal Act* is amended by inserting immediately before subsection (2) the following:

"(1B) In subsection (1), 'would affect', in relation to an act under the *Petroleum Act*, means would be likely to affect."

19. Amendment of *Petroleum Amendment Act 1998*

Section 13 of the *Petroleum Amendment Act 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998* is amended by inserting after subsection (2) the following:

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"(2A) The information provided by an applicant under subsection (2) is to be current as at the date on which the applicant was notified that the information was required."
