

NORTHERN TERRITORY OF AUSTRALIA

PETROLEUM AMENDMENT REGULATIONS

TABLE OF PROVISIONS

Regulation

1. Citation
2. Commencement
3. Principal Act
4. Interpretation
5. Notice of application for permit
6. Repeal and substitution:

"19. OBJECTIONS"

7. Heading to Part IIA:

"PART IIA — PRESCRIBED PETROLEUM ACTS ABOVE
HIGHWATER MARK OR FOR INFRASTRUCTURE FACILITIES"

8. Prescribed petroleum acts, &c.
9. Application
10. Act valid if procedures complied with
11. New section:

"57DA. PRESCRIBED PETROLEUM ACTS COVERING BOTH
ALTERNATIVE PROVISION AREA AND OTHER
AREA"

12. Form of application
13. Notification of native title holders, &c.
14. Response to objections
15. Inquiry by Minister
16. Compliance with recommendations of Tribunal
17. Judicial review
18. Withdrawal of objections
19. Compensation
20. New Part:

"PART IIB — INTERTIDAL PETROLEUM ACTS

- "57R. DEFINITION
- "57S. APPLICATION
- "57T. NOTIFICATION OF NATIVE TITLE HOLDERS,
&c.
- "57U. RELEVANT MINISTER TO HAVE REGARD TO
COMMENTS
- "57V. COMPENSATION"

21. Compensation to owners and occupiers

22. Procedural rights in respect of prescribed petroleum acts where section 26MD(6A) of Native Title Act applies

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1998, No. 44*

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*.

Dated 1 October 1998.

N R CONN
Administrator

PETROLEUM AMENDMENT REGULATIONS

1. CITATION

These Regulations may be cited as the *Petroleum Amendment Regulations*.

2. COMMENCEMENT

These Regulations come into operation on the day on which, but immediately after, the *Petroleum Amendment Act 1998* commences.

3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 5 of the Principal Act is amended -

- (a) by omitting from subsection (1) the definition of "affected land" and substituting the following:

"'affected land' means land that will be or is reasonably likely to be affected by activities

* Notified in the *Northern Territory Government Gazette* on 1 October 1998.

Petroleum Amendment Regulations

done under a petroleum interest if the relevant prescribed petroleum act is done;";

- (b) by inserting after the definition of "native title holder" in subsection (1) the following:

"'native title objection' means an objection to a prescribed petroleum act lodged by a registered native title claimant or registered native title body corporate under section 57F(3A) or 19(1);

'onshore place' has the meaning given in section 253 of the Native Title Act;"; and

- (c) by omitting from the definition of "petroleum interest" in subsection (1) "section 57B" and substituting "section 57B(3)".

5. NOTICE OF APPLICATION FOR PERMIT

Section 18 of the Principal Act is amended -

- (a) by omitting subsection (1)(e) and substituting the following:

"(e) the prescribed period within which objections to the granting of the permit may be lodged with the Minister."; and

- (b) by adding at the end the following:

"(4) In this section, 'prescribed period' means -

- (a) if the notice relates to a prescribed petroleum act to which section 24MD(6B) of the Native Title Act applies - 2 months after the date on which the notice is published under subsection (1)(b); or

- (b) in any other case - 30 days after the date on which the notice is published under subsection (1)(b).".

6. REPEAL AND SUBSTITUTION

Section 19 of the Principal Act is repealed and the following substituted:

"19. OBJECTIONS

"(1) Subject to section 18(3) and to any other provision of this Act relating to the lodgement of objections, within the prescribed period referred to in section 18, a person may lodge in writing with the

Petroleum Amendment Regulations

Minister an objection to the granting of the permit and his or her grounds for that objection.

"(2) The Minister must give to the applicant copies of the objections (if any) lodged under subsection (1), together with a notice to the effect that, within 30 days after the date of the notice, the applicant may lodge with the Minister replies to or other comments about the objections."

7. HEADING TO PART IIA

The heading to Part IIA of the Principal Act is omitted and the following substituted:

"PART IIA — PRESCRIBED PETROLEUM ACTS ABOVE HIGHWATER MARK OR FOR INFRASTRUCTURE FACILITIES".

8. PRESCRIBED PETROLEUM ACTS, &c.

Section 57B of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) The following acts are not prescribed petroleum acts:

- (a) a renewal to which, by virtue of section 26D(1) of the Native Title Act, Subdivision P of Division 3 of Part 2 of that Act does not apply;
- (b) an act to which, by virtue of section 26D(2) of the Native Title Act, Subdivision P of Division 3 of Part 2 of that Act does not apply."

9. APPLICATION

Section 57C of the Principal Act is amended —

- (a) by omitting subsection (1) and substituting the following:

"(1) Subject to subsection (1A), this Part applies in relation to a prescribed petroleum act that affects native title rights and interests —

- (a) where it is an act to which the consequences of section 24MD(6B) of the Native Title Act apply; or
- (b) where —
 - (i) the act —

Petroleum Amendment Regulations

- (A) is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act would have otherwise applied; and
 - (B) relates, to any extent, to an area of land that is an alternative provision area; and
- (ii) there is a determination in force under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act.

"(1A) Where, in relation to a prescribed petroleum act -

- (a) this Part would, but for this subsection, apply because the act is to be done in part on an onshore place on the landward side of the mean highwater mark of the sea; and
- (b) Part IIB would, but for this subsection, apply because the act is to be done in part on an onshore place on the seaward side of the mean highwater mark of the sea,

the prescribed petroleum act is to be taken to consist of 2 separate acts as follows:

- (c) a prescribed petroleum act on the landward side of the mean highwater mark of the sea;
- (d) a prescribed petroleum act on the seaward side of the mean highwater mark of the sea."; and
- (b) by omitting subsection (5).

10. ACT VALID IF PROCEDURES COMPLIED WITH

Section 57D of the Principal Act is amended -

- (a) by omitting from subsection (1) "(1) A prescribed petroleum act" and substituting "A prescribed petroleum act"; and
- (b) by omitting subsection (2).

11. NEW SECTION

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

Petroleum Amendment Regulations

"57DA. PRESCRIBED PETROLEUM ACTS COVERING BOTH
ALTERNATIVE PROVISION AREA AND OTHER AREA

"(1) Where, in relation to a prescribed petroleum
act -

- (a) this Part applies because the act is to be done
in part in an alternative provision area; and
- (b) Subdivision P of Division 3 of Part 2 of the
Native Title Act applies because the act is to
be done in part in an area that is not an
alternative provision area (in this subsection
called 'the other area'),

then -

- (c) the prescribed petroleum act is to be taken to
consist of 2 separate acts as follows:
 - (i) a prescribed petroleum act in the
alternative provision area;
 - (ii) a prescribed petroleum act in the other
area; and
- (d) the prescribed petroleum act referred to in
paragraph (c)(ii) is to be taken to be done
only when the first activity under the
petroleum interest that resulted from the
prescribed petroleum act is done.

"(2) If -

- (a) a prescribed petroleum act is done in an area
that, at the time the act is done, appears to
be an alternative provision area (in this
subsection called 'the inadvertent act'); and
- (b) after the inadvertent act is done, it becomes
apparent -
 - (i) that the act was done in part in an area
that is not an alternative provision area
(in this subsection called 'the other
area');
 - (ii) that the act should have consisted of 2
separate acts as described in subsection
(1)(c)(i) and (ii) to which this Part and
Subdivision P of Division 3 of Part 2 of
the Native Title Act, respectively, should
have been applied; and

Petroleum Amendment Regulations

- (iii) that, therefore, the act is invalid in so far as the other area is concerned,

then -

- (c) the invalidity does not affect the inadvertent act in so far as the alternative provision area is concerned; and
- (d) the inadvertent act has effect as if it had been done only in relation to the alternative provision area."

12. FORM OF APPLICATION

Section 57E of the Principal Act is amended by inserting in paragraph (c) "the name or names of" before "the representative".

13. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

Section 57F of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(3A) An objection may be lodged in accordance with the statement referred to in subsection (3).

"(3B) Whether a person lodges a native title objection to a prescribed petroleum act to which section 24MD(6B) of the Native Title Act applies under subsection (3A) or under section 19(1), this Part applies in relation to the objection.

"(3C) Where, but for this subsection, a person would be entitled to lodge a native title objection to a prescribed petroleum act to which section 43A of the Native Title Act applies under subsection (3A) and under section 19(1), the person may only lodge a native title objection under subsection (3A).

"(4) A notice under subsection (1) may relate to more than one prescribed petroleum act."

14. RESPONSE TO OBJECTIONS

Section 57G of the Principal Act is amended by omitting from subsection (1) "an objection to a prescribed petroleum act is lodged in accordance with a statement referred to in section 57F(3)" and substituting "a native title objection is lodged".

15. INQUIRY BY MINISTER

Section 57K of the Principal Act is amended by omitting from subsections (1) and (2) "an objection under

Petroleum Amendment Regulations

section 57F(3)" and substituting "a native title objection".

16. COMPLIANCE WITH RECOMENDATIONS OF TRIBUNAL

Section 57L of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

"(1) Where, in relation to a prescribed petroleum act -

- (a) the Tribunal recommends that the prescribed petroleum act must not be done; or
- (b) the Tribunal recommends that the prescribed petroleum act may be done, whether or not subject to specified conditions being complied with, and the Minister wishes to do the act,

the Minister must comply with the recommendation unless -

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

"(2) Where -

- (a) the Minister has complied with subsection (1)(c) and (d); and
- (b) subsection (1)(e) applies,

the Minister may -

- (c) reject the recommendation; or
- (d) accept the recommendation and -
 - (i) reject any of the conditions in the recommendation, with or without imposing his or her own conditions;
 - (ii) vary any of the conditions in the recommendation;

Petroleum Amendment Regulations

(iii) substitute his or her own conditions for any of the conditions in the recommendation; or

(iv) add his or her own conditions to the recommendation,

and do the prescribed petroleum act accordingly."

17. JUDICIAL REVIEW

Section 57M of the Principal Act is amended -

(a) by inserting after subsection (2) the following:

"(2A) For the purposes of subsection (2), where the decision being reviewed complies with a recommendation of the Tribunal, the decision is to be taken to include the decision of the Tribunal to make the recommendation."; and

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

"(b) who lodged a native title objection."

18. WITHDRAWAL OF OBJECTIONS

Section 57N of the Principal Act is amended -

(a) by omitting from subsection (1) "An objection lodged under section 57F(3)" and substituting "A native title objection"; and

(b) by omitting from subsection (2) "objections to a prescribed petroleum act lodged under section 57(3)" and substituting "native title objections".

19. COMPENSATION

Section 57P of the Principal Act is amended -

(a) by omitting from subsection (3) "Compensation" and substituting "In the absence of agreement, compensation"; and

(b) by omitting from subsection (5) "an objection to the prescribed petroleum act under section 57F(3)" and substituting "a native title objection".

Petroleum Amendment Regulations

20. NEW PART

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

"PART IIB - INTERTIDAL PETROLEUM ACTS

"57R. DEFINITION

"In this Part, 'intertidal petroleum act' means an act to which this Part applies by virtue of section 57S.

"57S. APPLICATION

"Subject to section 57C(1A), this Part applies in relation to a prescribed petroleum act that -

- (a) affects native title rights and interests; and
- (b) is to be done on an onshore place on the seaward side of the mean highwater mark,

other than a prescribed petroleum act that is an act to which the consequences of section 24MD(6B) of the Native Title Act apply.

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

"(1) An applicant for an intertidal petroleum act must, within 14 days after lodging the application or the further time that the Secretary in writing allows, serve written notice of the making of the application on -

- (a) the registered native title claimants (if any) in relation to any of the affected land;
- (b) the 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 (if any) in relation to the affected land.

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

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

Petroleum Amendment Regulations

- (a) registered native title claimants and registered native title bodies corporate in relation to any of the affected land; or
- (b) if there are no such registered native title claimants or registered native title bodies corporate in relation to the any of the affected land - the representative Aboriginal/Torres Strait Islander body or bodies in relation to that land,

may, within 30 days after the date of the notice or the further time allowed in writing by the Secretary, lodge in writing at the office of the Secretary comments on the intertidal petroleum act.

"(4) Comments may be lodged in accordance with the statement referred to in subsection (3).

"(5) A notice under subsection (1) may relate to more than one intertidal petroleum act.

"(6) In subsection (3), 'prescribed information' means -

- (a) the name of the applicant for the intertidal petroleum act;
- (b) the intertidal 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 identify 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.

"57U. MINISTER TO HAVE REGARD TO COMMENTS

"The Minister must not do an intertidal petroleum act unless the Minister has taken into account the comments (if any) lodged under section 57T(4).

Petroleum Amendment Regulations

"57V. COMPENSATION

"(1) Compensation for the effect of an intertidal petroleum act on native title is payable to the native title holder by the holder of the petroleum interest to which the intertidal petroleum act relates.

"(2) A native title holder or registered native title claimant who intends to claim compensation under this section for the effect of an intertidal petroleum act on their registered native title rights and interests must make the claim within 3 years after the act is done.

"(3) In the absence of agreement, 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 compensation payable under subsection (1), the holder of the relevant petroleum interest or the native title holder may refer the dispute to the Tribunal."

21. COMPENSATION TO OWNERS AND OCCUPIERS

Section 81 of the Principal Act is amended -

- (a) by omitting from subsection (2)(a) "the person in apparent possession" and substituting "the occupier";
- (b) by omitting from subsection (2)(a) "that owner" and substituting "the Registered proprietors and the occupier";
- (c) by omitting from subsection (3) "permittee" and substituting "permittee or licensee"; and
- (d) by omitting subsections (4) and (5).

22. PROCEDURAL RIGHTS IN RESPECT OF PRESCRIBED PETROLEUM ACTS WHERE SECTION 26MD(6A) OF NATIVE TITLE ACT APPLIES

Section 117C of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) This section applies in relation to a prescribed petroleum act to which section 24MD(6A) of the Native Title Act applies but to which section 24MD(6B) of that Act does not apply, other than a prescribed petroleum act -

- (a) that is done on an onshore place on the seaward side of the mean highwater mark of the sea; and

Petroleum Amendment Regulations

(b) in respect of which the Native Title Act does not otherwise provide.".
